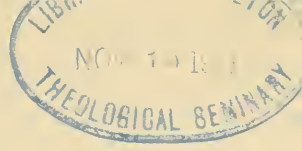




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The history and law of
church seats, or pews



THE

History and Law

OF

CHURCH SEATS,

OR

PEWS.

BY

✓
ALFRED HEALES, F.S.A.,

PROCTOR IN DOCTORS' COMMONS.

Book I.—HISTORY.

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TO
THE RIGHT HONORABLE
SIR ROBERT JOSEPH PHILLIMORE, KNT., D.C.L.,
DEAN OF THE ARCHES, &c., &c., &c.,

This Work

IS (BY PERMISSION)

DEDICATED, WITH PROFOUND RESPECT,

BY

THE AUTHOR.

P R E F A C E.



THE Law affecting Pews, or Church Seats, has not hitherto obtained that attention which the subject merits. While by the liberality of many, and the munificence of not a few persons, vast sums are expended every year in the apparently almost hopeless endeavour to provide church accommodation for a rapidly increasing population; the importance of utilizing to the utmost the church-room thus acquired becomes daily more apparent. Considering the palpable impracticability of extending the church-room sufficiently to permit of allotting to every one a place for his exclusive occupation (as many persons would desire), it becomes specially desirable, in the interest of the Church at large, to inquire into the rights of those favoured persons, by comparison few in number, who claim to hold to themselves to the exclusion of others, by faculty or prescription, or by a simple appropriation, a particular part of the church-room; and equally important in the interest of those persons themselves,

It has been thought unnecessary to burthen this Preface with the very numerous references to authorities, which would be necessary if any were given, in verification of this preliminary sketch; but abundant references appear in the work itself for the facts there mentioned.

to ascertain, so far as may be, whether their claims rest on a good and solid basis of legal right; and thus the doubts which have of late years been widely circulated may be set at rest. It is a valuable natural characteristic of the English people, to maintain with persistence what they believe to be a right, and to abandon it readily should the supposed right prove to be devoid of sound foundation.

Opinion has long been divided as to what arrangements of church-room are most advantageous for the purposes of order and economy of space; and the question is complicated by the introduction of theological considerations. It is not the object of this work to enter upon those branches of the subject, which may be found freely discussed in various books and periodicals; but it is proposed to collect and arrange in one part of the work all available information from ancient authorities bearing upon the early history of the subject, and in the other those points of Law which the Courts have decided, or Parliament has decreed.

When, at an early date, all churches were free and open, and no seats existed, except a few stalls in the chancel, there was then, with a smaller population, ample standing and kneeling room for all; every one who desired to attend Divine Service could on entering the church place himself in any part designed for the congregation, as he thought proper; none interfering with any who had previously come and taken up a position. That such

was the case in England to a late mediæval period will be agreed on all hands.

Though one can hardly imagine (and indeed there is no ground for so supposing), that beyond absolutely essential limits any general ecclesiastical organization was contemplated at the time of the first introduction of Christianity into this country, yet in time an arrangement arose, which by degrees became consolidated into an Ecclesiastical system. Religion gradually extended throughout the kingdom, and as gradually acquired an organization. Cities, under the rule of a Bishop, formed a nucleus; they were divided and subdivided, and as evangelization spread thence, rural districts were formed wherever the essential requirements were provided, and these divisions and districts, each with its church, were termed parishes. The founders being persons of wealth and rank, endowed the churches, and thereby acquired for themselves and their descendants (and not without reason) the right of Patronage—that is, of appointing, or presenting (subject to necessary proof of fitness), a clergyman to the Living, or in other words the selection of a properly qualified person to perform the ecclesiastical duties of the parish, in return for the emoluments with which the founder and others had endowed it. All persons resident within the bounds of each parish were within the spiritual oversight of the Parson of their parish. But with the necessary distinction between civil and ecclesiastical duties

and authorities, the clergyman when appointed was solely answerable to the Bishop for the due performance of his duties towards his parishioners, and generally in all matters touching his ecclesiastical office and conduct. And as regards the parishioners they were, on the one hand, entitled to the benefit of the ecclesiastical offices of the parson, and to a participation in the public religious services for which the churches were intended; while, on the other hand, they were compellable by ecclesiastical censures not only to pay the tithes with which their lands were charged, but also to maintain the fabric and provide the necessaries for Divine Service.* In short, every person was strictly a Member of the Church, and enjoyed its rites and privileges; and he was also bound to avail himself of these rites and privileges, and to contribute towards the expenses connected with them. There was thus established a mutual relation of rights and duties between the parson and the parishioners.

In saying, generally, that the duty of maintaining the fabric rested with the parishioners, it is necessary to add that there were exceptions to this liability. The Chancel, perhaps as being specially set apart for the actual performance of Divine Service, was repaired and maintained by the Rector; and in cases where the Rectorial tithes in course of time became vested in an Ecclesiastical Officer or Corpo-

* In other countries, perhaps generally, the parson was chargeable for the repairs of the whole of the fabric.

ration, or a monastic body, or (later) in a layman, such person or body, termed the Appropriator or Impropiator, was under the same liability. Then, also, the Founder of the church frequently, and perhaps very generally, retained from the parishioners a part of the building, consecrated equally with the rest, and forming a part of the structure: this part was often situated on one side of the chancel, or else formed the East end of an aisle, and was used by the Founder and his family when attending public service, and for the other services performed by their own chaplain independent of the parish priest, and for burial of deceased members of the family. From the Founder himself it descended, not necessarily with the patronage, to his family and heirs, imperceptibly becoming attached to his Manor or Mansion House.

And often at a period subsequent to the erection of the church, a person of great importance in the parish obtained permission from the Bishop to build for himself and family a chapel or aisle, as an addition to the structure previously existing, and in which he had the like exclusive and enduring rights to those possessed by the Founder in his chapel. It need scarcely be observed that such chapels or aisles, whether built originally by the Founder, or subsequently by others, in no way derogated from whatever rights attached to the rest of the building. From this source arises one very important part of the law affecting church seats.

The rest of the church—that is to say, the whole area, other than the chancel and such chapels, was expressly intended for and occupied by the parishioners generally; and there can be no doubt that, when no seats existed, every parishioner had, as already observed, an equal right to take up his standing, during service time, wherever he pleased, in any unoccupied spot.

In the 15th, or probably in the latter part of the 14th century, benches were occasionally introduced into the church, sometimes generally throughout the nave, or nave and aisles; but it was considerably later before it became usual to fit churches with them throughout. Such seats are affected by very different legal considerations from those which affect the chapels or aisles above referred to as forming part of, or rather as an addition to, a church.

The Law as regards the right to chapels or aisles forming part of a church, rests upon the presumption that they were built for the private use of their Founder and his family, and descended to his successors; the fact is not often capable of proof, and therefore the claim is upheld on the ground of prescriptive right.

The next class is where a Seat is claimed to be held under authority of a faculty granted by the Ordinary to an individual and his family, or to him and his successors: and as the grant itself is rarely forthcoming after a long period of time, the title of

the holder rests on the presumption that his tenure originally commenced by virtue of such a grant.

There is then to be considered the case of the large mass of the population and their rights in the rest of the church unclaimed by the previous classes. Beside this there is the distinct class of "Act of Parliament churches," governed almost, if not entirely, by Acts of Parliament alone, as a temporary measure, and which can only be considered by themselves without regard to the general Law of the Land.

In neither of the three species of rights affecting the seats in the churches of old parishes is there any legal enactment, Ecclesiastical or Civil, or other positive basis from which to commence. The evidence of antiquity alone can determine either; and it is therefore a very remarkable fact that up to the present day there has been no actual research into the archæology of the subject—no attempt to dig down below the surface, and ascertain how far the structure which has been raised rests upon a basis sufficiently broad and deep to ensure its stability. At first sight a work called the "History of Puses,"* seems to form an exception to this statement. It is a thin octavo volume, prepared with a very considerable amount of labour and research; but its aim seems chiefly to have been an opposition to the

* The History of Puses was published in 1841, anonymously, under the auspices of the Cambridge Camden Society, but was written by the late Rev. John Mason Neale, D.C.L.; and rapidly passed through three editions.

high square pews which are now gradually disappearing as each successive church undergoes the process of "restoration:" the materials collected for that work almost entirely refer to a period long subsequent to the general introduction of church seats, and therefore avail very little towards the legal consideration of the subject. Beside this there have only appeared little brochures and magazine Articles, many good of their kind, but copying their materials one from the other, with little attempt at further research.

On the Law and legal History of Pews there are the duodecimos of Billings, and Oliphant, and a smaller treatise by Fowler; preceded by an excellent chapter in Rogers' Ecclesiastical Law. Billings' work has the objection of being written with a bias—a grave fault in a Law book, even when the bias is frankly admitted: and its references to authorities are neither very numerous nor exact.* Oliphant's work is far superior; but it is almost restricted to an arrangement of the points decided by the Courts or settled by Parliament.

The object of the present work is therefore of a twofold nature. The first part, or Book I., is an investigation of the Early History of the subject, from its origin (so far as the gathered mists of antiquity will permit), until it acquired the form

* E. g., *Kennett's Parochial Antiquities of Ambrosden*, by passing through the medium of an abbreviation, *Par. An.*, becomes *Parliamentary Authorities*.

in which it is now clothed. The bearing of this upon the subject in its legal position would seem to be of exceedingly high importance. The writer has deemed it as much a point of duty to his readers, as of honour to himself, to place before them every early authority which has come within his range ; and has endeavoured to draw impartial conclusions from his materials. It has been found impossible to limit the contents of some chapters to an exact accordance with their headings.

The second part of the work, or Book II., is intended to show, under a special arrangement of the subject, what points have been decided hitherto, including all Cases to the present date ; and also the effect of the provisions of the Church Building Acts.

That pains have not been spared to throw light upon the subject, and render it as complete as possible, will appear from the fact that the work contains between 1400 and 1500 extracts from or references to about 350 authorities, including many original records and scarce books, every one of which (except in the few instances where it is expressly so stated) has been personally extracted or verified by the writer.*

* How common a practice it is to copy without verification the references given by other writers, is best known to those who investigate subjects for themselves ; and they are too well aware how frequently the practice misleads, and how many weary hours' labour it involves, by apparently trifling errors or imperfect references, before the required paragraph or line can be discovered and secured for use.

It will be understood that the word *pew* is by no means limited to a high-sided square compartment such as that to which it is now in common parlance more frequently confined, but is here applied, as in its earliest use, to any church seats intended for the accommodation of the congregation.

Although care has been taken to exclude matter not strictly within the scope of the work, yet the extracts from early authorities contain incidentally many little facts and incidents not devoid of general archæological interest, as will readily be seen by a glance through the Index.

The author acknowledges, with most sincere thanks, the aid received from many quarters. To the Right Honorable Sir Robert J. Phillimore he is indebted for the loan of some unreported Judgments in the Court of Sarum. He has to express his deep obligation to the authorities of various Libraries for their great liberality in permitting and assisting research in their stores of knowledge, without which indeed the work could not have been accomplished: the libraries of the Law Institution and Sion College must be especially mentioned; and also those of the Inns of Court, and the Archbishopial Library at Lambeth, have also assisted. And, in a different department of the subject, he is equally under obligation to the Registrars of various Ecclesiastical Courts, who have not only most liberally permitted, but have given every assistance in researches in the documents under their charge;

of whom must be especially mentioned John Shepherd, Esq., the Registrar of the Consistory Court of London, W. H. Cullen, Esq., (late) of Canterbury, Henry P. Gates, Esq., of Peterborough, H. R. Evans, Esq., of Ely, and Messrs. Essell, Knight and Arnold, of Rochester; as well as to many others who have furnished him with information as to the nature of their records bearing upon this subject. He is also much indebted to the authorities of various parishes for their kind courtesy in permitting access to their accounts and papers, and to various friends;* and, indeed, is able thankfully to acknowledge that in no instance has he met with anything but ready courtesy and assistance.

* The extracts from the parish books of St. Mildred Poultry and St. Mary Colechurch, supplied by Mr. Milbourn, have been published while this work was in the press, in his History of those Churches.

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The History and Labors

OF

CHURCH SEATS, OR PEWS.

BOOK I.—HISTORY.

CHAPTER I.

EARLY ARRANGEMENT OF CHURCHES.

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Ch. I.

IT may be stated without fear of contradiction that churches at an early date were entirely unprovided with seats for the congregation.

Arrangement
of a Basilica.

An early church, or basilica, whether as at first (it is believed) simply a hall of justice converted to a religious use, or subsequently built expressly for Divine service, but on the same model, usually consisted of a nave and aisles separated by rows of columns, and at the end of the nave a semicircular apse. Raised on a flight of steps, in the chord of the apse, stood the altar, and behind it, several steps higher, round the circumference of the apse, were the seats of the presbyters; in the centre of which, raised still higher, was the Bishop's throne. The celebrant stood in the apse, behind the altar, and facing the people. In front of the altar was a large space elevated above the

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of a Basilica.

level of the nave and aisles, and equivalent to the choir of a subsequent period, used for the purpose of and by those who took part in the performance of the Divine offices; on each side of this ran a stone bench. The basilica of San Clemente at Rome is the best known, and perhaps least unaltered example of the arrangement of a church in very early days; but many other instances, dating from that period till the twelfth century, or even later, and still existing in Italy, might easily be cited (*a*). Sta. Fosca at Torcello, near Venice, and San Miniato, near Florence, will suffice as examples. Flights of steps lead up to the choir, while others lead down to an undercroft or crypt beneath the choir, called the Confessionary, in which were preserved the relics of the Saint to whom the church was dedicated. In many early churches, however, there was no raised place for the choir, and the apse itself was not very much above the level of the nave. Ravenna furnishes good instances, and there is also the magnificent church of S. Paolo fuori le Mura, Rome, unless indeed its arrangement has been altered since the fire.

The congregation probably had access to the Confessionary, and ordinarily occupied the body of the church (as distinguished from the choir and apse), and stood or knelt, and enjoyed perfect freedom to enter or leave when they thought fit.

Subsequent
change.

It would not be an easy task to show the origin, or even fix an approximate date, of the change which arose from

(*a*) Views and plans of this and several churches similarly arranged are given in Agincourt's *Histoire des Arts par les Monuments*, plates 13, 16, 17, 25, 28, and 36. Plans in Fergusson's *Handbook of Architecture*, pp. 484 and 500.

the plan of a basilica (*b*), as above described, to that of a Saxon or other very early church, in which the choir was removed out of the nave and formed an addition to the ground plan by a square interposed between the east end of the nave and the apse. Such is the plan of a very large number of churches on the Continent of Europe, and (with the chancel subsequently more elongated) of most cathedrals; but in England the apse soon disappeared, and so completely that amongst the vast number of old parish churches still existing there are to be found but about forty with apses (*c*), and of them a very small proportion date more recently than the twelfth century.

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change.

The position of the celebrant was changed; he no longer officiated facing the people, and consequently on the side of the altar furthest from them; but he stood and knelt between them and the altar (with his back to them), and consequently in the same relative position as in the ancient Jewish temple. It does not appear that in the Oriental Church the priest ever occupied any other position than this. Whether the change in the form of the building was consequent upon the change in the position of the priest, or *vice versâ*, there is no evidence to show; but the site for the altar was removed from the west to the east end of the church, so that the priest continued to face eastwards whilst officiating.

Arrangement
of a Saxon
Church.

In the mediæval period cathedrals frequently belonged to monastic or collegiate establishments, or they had other-

Choir stalls.

(*b*) Certain churches in Italy, but chiefly in Rome, still retain the title of Basilicas, but except in dignity and privileges there appears to be no special distinction from other churches.

(*c*) *Handbook of English Ecclesiology*, pp. 41—3.

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Choir stalls.

wise a large staff of clergy or clerks attached to them, for the purpose of assisting in the performance of Divine Service with the more solemnity; and as these services were frequent and of long duration, some seats or other supports were necessary; stalls, therefore, of wood were supplied for the purpose, with seats termed misereres, folding up on a hinge, so as still to afford a partial support during such part of the time as the occupants were obliged to stand (*d*).

Constitutions
as to repairs.

The *Constitutions* of Walter de Gray, Archbishop of York, dated 1252 (*e*), lay down the respective duties of the parishioners and the rectors and vicars with respect to repairs: the parishioners are to provide chalice, bells, lights, and a long list of other articles, and keep in repair the nave; while the rectors, on their part, are to maintain and repair the principal chancel, walls, roof, and glass windows, and the appurtenants, “cum Descis et Scamnis, ac aliis ornamentis honestis.” No desks or seats in the nave are mentioned.

Sedilia for
clergy.

Ordinary parish churches, where there was no such staff of clergy, clerks, or brethren, were provided with a sedile cut in the south wall of the chancel; usually there were three such sedilia, for the priest, deacon, and sub-deacon, but the number ranged from one to seven (*f*).

(*d*) This arrangement was revived in the seating of the early churches built in America: at the close of the prayers they were slammed down with a noise like the broadside of a frigate. *British Mag.*, Vol. XVI. p. 503.

(*e*) Spelman's *Concilia*, p. 292; Wilkins' *Concilia*, Vol. I. p. 698.

(*f*) Non-archæological writers or lecturers on the subject of pews invariably make a great point of such sedilia, quoting from a paper by Mr. Denne in the *Archæologia*, Vol. XI. pp. 317 and 375 (published in 1793), upon the Sedilia at Upchurch, in Kent, as though those were unique, instead of being examples of the usual arrangement for the clergy.

During all this time we find no seats or other similar provision for the accommodation of the congregation. In a very limited number of churches in this country there is, it is true, a stone bench running round the north, south, and west walls, but it occurs almost as often on the exterior as in the interior of the building, and there is one example in which a stone bench runs round each of the pillars.

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No seats for
congregation
generally.

In the greater part of Europe, including the whole of the south, the churches are void of seats to this day, saving a loose bench or so, capable of holding a dozen or two of people: the congregation stand or kneel; and in Spain there is provided for their accommodation a number of round mats, which they can take with them on entering the building, and on which the women usually kneel or sit. It is just possible that such may have been partially the case in England. In the parish accounts of Leverton, Lincolnshire (*g*), for the year 1531, is a payment of *j**l*. for “nats,” or mats of plaited straw. And in the inventory of plate and furniture of Worcester Cathedral (*h*), dated in 1576, are “Three long carpetts to sytt apon at 3mons,” but these were “For the quyer.”

Not now usual
in Europe.

We have not noticed any example of seats with doors, whereby to maintain an appropriation, further south than a small church in a poverty-stricken suburb of Valence; and it is very rare to find them in so low a latitude.

Appropriation.

With the exception of a very remarkable Canon, made

(*g*) Extracts by Edward Peacock, Esq., F.S.A.; *Archæologia*, Vol. XL, p. 353.

(*h*) Noakes' *History of Worcester Cathedral*, p. 546.

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Seats rare
before four-
teenth century.

by the Diocesan Synod of Exeter (*i*) in 1287, denouncing the conduct of persons claiming exclusive right to particular seats, (and which, on grounds hereafter stated, probably referred to seats in the choir,) we do not find in England any sitting accommodation whatever for the congregation before the fourteenth century, and instances previous to the middle of the fifteenth century are rare; there can be no doubt that a sitting posture in church would have been an entire novelty. We may observe that porches were generally fitted with a stone bench down each side, evidently that people might rest themselves previous to the service.

Arrangements
shown in
illuminations
of MSS.

A reference to illuminations and paintings will prove conclusively that there was nothing more than an occasional stray bench, and that any general fitting of churches with benches was of late date.

It seems somewhat strange that we rarely find any representation of a scene showing the internal arrangements of a church, and those that do occur are treated in so conventional a manner as to diminish the value of the information which they might otherwise afford.

In a manuscript of the *Roman de St. Graal*, dating quite at the beginning of the fourteenth century, and now amongst the Royal MSS. in the British Museum (*j*), is an illumination representing the interior of a church, where a bare-footed monk in dark grey is standing in a moveable pulpit and expounding to a congregation, who are all

(*i*) Wilkins' *Concilia*, Vol. II. p. 140.

(*j*) *Roman de St. Graal*; Royal MS. 14 E. III. fol. ix. verso. There are poor engravings of it in Knight's *Pictorial History of England*, Vol. II. p. 152, and in Knight's *Old England*, Vol. I. p. 356.

seated on the floor, the women being in front. There are no benches, chairs or stools.

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shown in
illuminations.

In another MS., also dating quite early in the fourteenth century and of French execution, are “les III. Sermons de St. Gregoire” (*k*), headed by miniatures in which he is represented as an archbishop, standing in a panelled, wooden pulpit, and preaching to congregations seated evidently upon low stools, though the stools are not shown. The individuals are not in rows, but very irregularly placed, showing that their seats were freely moveable. All are bareheaded, and there can be no doubt that the scene is intended to represent a congregation in church.

Bound up with other things in the same volume as the last, and folioed in continuation, is a *Life of St. Denis*. Under the heading “Comment S’ Denis preeschoit au pueple de Paris,” is an illumination in which that saint, habited as a bishop, is delivering an address, which, judging from its strongly-marked effect upon the congregation, is evidently of a very sensational nature. Though no seats are perceptible, the audience are certainly seated on stools almost as high as modern chairs, and two clerics, behind the preacher, have rather high seats. One person, in full armour of banded mail, has been so stirred up by the address that he is rushing out of the place, perhaps to devote himself to the war of the Christians against the Saracens for possession of the Holy Places.

The Harleian Collection contains a very beautiful manuscript dating later in the same century, in which there are no less than five illuminations representing a preacher and congregation. The first of these is under the heading,

(*k*) Egerton MSS., 745.

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illuminations.

“Sermon de saint augustin, evesque” (*l*). He stands in a wooden pulpit and preaches to a small congregation. Four persons are seated on the ground, two of them sitting back against the pulpit and under the outstretched hands of the bishop; one of the four is perhaps a man, and is fast asleep with his chin on his hands and his elbows on his knees. Two men are standing listening.

Next is the “Sermon de S’ ambroise euesque” (*m*), where part of the congregation are seated on two long, rude forms: one man reclines on the ground, with his elbow on the form; one has an open book; the rest stand.

Then “Ci comēnce leprestre de saint iaque apostre” (*n*), who leans on a kind of potence-shaped desk or rail; the congregation are seated on the ground, except one who may, possibly, have a low stool.

In “leprestre S. pierre” (*o*) he stands in a wooden pulpit, and the congregation of men and women are all standing.

The fifth has the heading “Six lecons seront leues de leprestre saint iehan, qui cy commence” (*p*). He leans on a desk like that of St. James in a previous example; of the congregation of seven persons, four are women seated on the ground, and the men stand.

In all these examples the arrangement is evidently conventional; the ground is always a bright grass-green, yet the wooden pulpit would hardly be out in a meadow; the

(*l*) (Volume called a *Psalterium*) Harleian MS., 2897, fol. clvii. verso. The illumination is that of which there is an engraving in Wright’s *Domestic Manners and Sentiments in the Middle Ages*, p. 293, the reference to the original of which he had lost.

(*m*) Ibid. fol. clx.

(*n*) Ibid. fol. clxxix. verso.

(*o*) Ibid. fol. clxxxii.

(*p*) Ibid. fol. clxxxiii.

men all wear their caps; from five to eight persons form the entire congregation; the backgrounds are sometimes a small chequer of gold and dark blue, such as is common in illuminations, and sometimes a large, rich scroll-pattern, in front of which, in one example, are two very formal trees.

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illuminations.

Next we may refer to an illumination occurring in a splendid copy of part of Froissart's *Chronicle*, dating in the earlier part of the fifteenth century (*q*). The scene is apparently in a church, the walls of which are hung with arras, and through an open door is seen a garden. An ecclesiastic in a pulpit is expounding to a congregation, part of whom are seated on a very low form, to which, however, the artist has omitted any legs or support; the sexes are separate, and two of the men are leaning against the wall, affording a good illustration of the practice reprobated by Myrc(*r*), who, writing nearly about the same period, says that none should stand leaning against pillar or wall, as being a careless and irreverent attitude.

Dating later in the same century, a splendid Harleian copy of the *Roman de la Rose* affords two illustrations of our subject. In one(*s*), a Bishop is preaching to a few persons seated in a kind of stalls with low, rounded backs; there is no doubt the scene is in a church, though treated very conventionally. The other illumination(*t*) represents a church, in which is a Bishop seated on a chair placed upon a temporary platform resting on barrels; he is en-

(*q*) Froissart's *Chronicle*; Harleian MS. 4380; at heading of chapter, fol. xxxvij.

(*r*) Myrc's *Parish Priest*, Early English Text Society, line 270, p. 9.

(*s*) *Roman de la Rose*, Harleian MS. 4125, fol. clxij.

(*t*) Ibid. fol. clxj. verso.

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illuminations.

gaged in reading an official document to an audience of three men and two women, who are all standing.

Towards the latter end of the fifteenth century are two illuminations which have been engraved to illustrate Johnes' Translation of Monstrelet's *Chronicles*. The first of these (*u*) depicts a chaplain preaching before Mary of Anjou, Queen of France; the scene is probably in a chapel, the floor of which is paved with black and white chequers: the women of the congregation are all seated on the floor, or, possibly, on low hassocks, and the men all stand. The other (*v*) is evidently a scene in a church; the chaplain is preaching before the king, who is of course crowned and seated on a throne, and the congregation, consisting of men only, are all standing.

Of about the same date of execution is a MS. *History of King Richard II.*, wherein occurs an illumination (*x*) representing the interior of a church, in which Archbishop Arundel, standing in a pulpit, reads a Bull or other document to a congregation, apparently all men, who are seated on the floor; the hands of some of them are wrapped in their sleeves and tunics, as if on account of cold.

The same MS. has a representation (*y*) of a venerable man, in civil costume, kneeling at the altar of a chapel very conventionally treated; half a dozen people, who fill the building, are all standing.

(*u*) Johnes' Translation of Monstrelet's *Chronicles*, Vol. IV. p. 113, pl. 43; from a MS. in the possession of M. d'Aigrefeuille.

(*v*) Engraved, *ibid.* pl. 44.

(*x*) *Histoire du Roy d'Angleterre Richard II.*, Harleian MS. 1319, fol. xii. It is engraved in Strutt's *Antiquities of England, Regal and Ecclesiastical*, p. 45; and in Knight's *Old England*, Vol. I. p. 284.

(*y*) *Ibid.* fol. xli. verso.

Myrc's *Parish Priest* clearly shows, that seats were not usual at his date; as in the following passage from a copy of the work, made about the year 1450 (z):—

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No non in chyrche stonde schal,
Ny lene to pyler ny to wal,
But fayre on kneus þey schule hem sette,
Knelynge doun vp on the flette (floor),
And pray to God wyth herte meke
To ȝene hem grace and mercy eke.

In the very numerous interiors of Flemish churches represented in paintings by Neefs (born 1570—died 1651), or attributed to him—examples of which may be seen in every large picture gallery—there are rarely any seats at all, and never more than a few stray benches set against the pillars, just as continues to be the case to the present day in Southern Europe. in early paintings.

The early pews were evidently moveable; thus, in the parish accounts of St. Michael, Cornhill (a), is an entry of payment, in 1464, of carriage of pews to and fro. Early seats moveable.

And so we may fairly presume that the payments by the churchwardens of the same parish (b), for clearing away the church dust when the pews were made clean in 1469 and 1474, were occasioned by moving the pews and clearing away the dust which had accumulated beneath

(z) Myrc's *Parish Priest*, line 270, p. 9; edited by Mr. Peacock; Early English Text Society.

(a) *St. Michael's Cornhill, Churchwardens' Accounts* (edited by W. Overall, Esq., F.S.A.), privately printed by Alfred J. Waterlow, Esq., 1871; p. 26. Extracts previously made in the *Archæological Association Journal* in an article by Mr. Wright, Vol. XXIII. p. 324.

(b) *Cornhill Churchwardens' Accounts*, pp. 40 and 54; and *Archæological Association Journal*, Vol. XXIII. p. 325.

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moveable.

them. Being of a massive structure, pews would not be moved very often. There is the payment in 1474 of x^s vi^d for translating of the mayor's pew (c).

That was clearly a moveable seat which is referred to in an action for trespass in 1493 (d), where the court held that the seat in respect of which the question of trespass arose was not annexed to the soil and was a mere chattel; and that (unless it were held by prescription) anyone might take away and remove the seat for his own ease and standing, for it was a common nuisance to them, because they could not have their standing by reason of such seats in the church (chescun home purrẽ prender le sedule qẽ ẽ del eglise & ceo remove pur son ease & standing, car cest al cõmen nusans de eux, car ils ne purrẽ aĩ lour standing pur tielx sedules, sʒ setes en el eglise).

Johnson, in his work on *Ecclesiastical Law* (e), states that such seats were the private property of the clergy, many of whose Wills contain bequests of the seats; other writers have copied this statement, for which he gives no authority. It seems most improbable on the face of it, that the clergy should have provided (and gratuitously) such accommodation for the parishioners when they furnished none for their own use; his assertion is one which, even if entirely groundless, from its nature could not be disproved, but we may say that no single instance has come under our notice; and his statements on other points are by no means reliable.

At Leverton church moveable seats continued in use

(c) *Cornhill Churchwardens' Accounts*, p. 55.

(d) *Year Book*, 8 Henry VII.: Ed. 1597, p. 12.

(e) Johnson's *Clergyman's Vade-mecum*, Vol. I. 178.

until subsequent to the Reformation, as appears by the parish accounts (*f*).

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At S. Margaret, Westminster, in 1549(*g*), there was paid for mending divers *pewes* that were broken when Dr. Lattymmer did preach, *j^s vj^d*.

Early seats
moveable.

1568. Paid to Thomas Watson for removynge the
stoles in the Church where dyvyne Service ys
Redd, & for mendynge the lettern ther . *iiij^s*

The frontispiece to the earlier editions of Fox's *Acts and Monuments* represents the interior of a church, and the congregation seated on box-like stools grouped around the pulpit(*h*). And probably such moveable seats were not infrequent until a considerably later period. Thus in the original edition of Sparrow's *Rationale*, published in 1676(*i*), the frontispiece is a representation of the interior of a church during the Litany: the priest, in surplice and cassock, kneels at a faldstool in the nave, and a large congregation kneel on a chequered pavement, the area of the church being entirely void of seats. On the title page of the same work is a smaller engraving, in which a clergyman is preaching from a high pulpit; the building is full of seats, arranged on a radiating plan, and mostly partitioned off, but a centre range (holding five in a row) is without backs: the effect is very similar to the arrangement adopted frequently in the last century, with a "pauper row" between the ranges of pews for the gentry:

(*f*) *Archæologia*, Vol. XLI. p. 364.

(*g*) Nichols' *Illustrations*, p. 13.

(*h*) Fox's *Acts and Monuments*, editions of 1596 and 1631.

(*i*) *Rationale upon the Book of Common Prayer*, by Anthony Sparrow, Bishop of Exeter; 12mo. Lond. 1676.

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Only a few,
and for the
aged and
invalids.

but a great difference in the congregation is noticeable, inasmuch as all the men wear their hats.

One might, indeed, reasonably anticipate that even at an early period there would generally be a few seats, at first moveable and unattached, for the aged, infirm and delicate, for whom such a provision would appear essential when they attended the delivery of sermons; and, considering the climate and the damp and cold of the flooring, whether paved with stone or tiles, or (as in the poorer and more rural localities) of beaten clay, it may be a matter of surprise that some wooden flooring or other relief was not introduced much earlier than was actually the case (*k*); but it must be recollected that domestic arrangements were equally deficient in comforts such as in these days would be considered essentials. The fact, however, must be borne in mind, that sermons were then probably short, and, as compared with the present system, rare, partly from usages of the period and partly from the restriction of preaching to a limited number of the clergy, secular or regular, who were licensed to preach.

Necessitated
for sermons.

Comparatively very few ancient pulpits exist in England, and such as are found seldom date earlier than the latter half of the fifteenth century: those which we see represented in illuminations are of wood, and are very generally moveable. But at the time of the Reformation sermons and discourses became of the highest importance, especially from their use with reference to disputed tenets and religious and political controversies of the day; and though

(*k*) Bishop Wren, in his *Ely Visitation Articles*, in 1662 inquires: "Are the *seats* well maintained and the bottoms of them boarded or paved?" (cap. iii. sec. 6).

their value for such purposes is now relatively small, their importance should not be undervalued. We find in parish accounts about the period of the Reformation not infrequent mention of the pulpit. Thus, at St. Mary Woolchurch Haw (*l*), the pulpett was made in 1543, at a cost of ciijs & iiij^d. At Bletchingly, Surrey (*m*), is an entry for—

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removyng the sceatts and scettyng the pulpyt
& the mendyng of dyvers thyngs x^s.

At Ludlow, in 1551 (*n*), the pulpit was moved and seats made where it had stood. The vestry of St. Michael, Cornhill (*o*), in 1576, ordered that the pulpit should be removed unto the north side of the choir; in the previous year they had resolved to have a preacher to read a lecture twice a week if the churchwardens could collect sufficient funds. And at St. Botolph, Aldgate (*p*), the vestry, at a meeting in 1581, agreed that the churchwardens should cause the pulpit to be removed to some place more convenient to the Masters of the parish. The inventory of goods at Worcester, in 1576 (*q*), mentions three long carpets to sit upon at sermons; and in 1595, St. John Zachary, London (*r*), there was paid

for a forme & other frames for 3mons in the
quyer v^s viij^d.

(*l*) St. Mary Woolchurch, Churchwardens' Accounts.

(*m*) *Surrey Archaeological Society's Collections*, Vol. IV. p. 106.

(*n*) *Archæological Association Journal*, Vol. XXIII. pp. 319, 320.

(*o*) *Vestry Minutes*, printed in St. Michael, Cornhill, Churchwardens' Accounts, p. 239.

(*p*) St. Botolph, Aldgate, Churchwardens' Accounts, Book No. 1.

(*q*) Noakes' *Worcester*, p. 546.

(*r*) St. John Zachary, Churchwardens' Accounts.

CHAPTER II.

EARLY NAMES OF CHURCH SEATS.

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CH. II.

Various names
in Latin.

WE will now advert to the names by which such seats were known. In early days, when the English language was in course of crystallization, there was naturally a certain indefiniteness of expression which greatly increases the difficulty of ascertaining the exact meaning of words. It is only by length of time and an extended literature that a language can attain a state of completeness and exactness; and where there were more words than one applicable to a particular subject, they were at first used interchangeably, and not till a later period did each acquire a special and peculiar meaning differing from that of the others. Such seems to have been the case with church seats at large, and we can only deduce some general ideas upon the subject from a considerable number of examples.

The terms applied to them were—in Latin,—

STALLA,
SEDILE, or SEDILIUM (pl. SEDILIA),
SEDES (pl. SEDIA),
SUBSELLIUM (pl. SUBSELLIA),
CATHEDRA (*a*),
SCABELLUM (*a*),
SCAMNUM,
PODIUM.

(*a*) These terms, *Cathedra* and *Scabellum*, were equally applied to secular seats; as, for example, in the Inventory of Household Effects of Thomas

In English,—

PEW, PEWE, PUE, PWE, PIEW (pl. PEWIS),

STALL, STAWYLL, (and under various spellings) STOOL,

SEGE,

SETTLE,

SEAT,

DESK.

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Names in
English.

The seats in a chancel or choir seem to have been Stall. always spoken of as *stalls*, and by that name alone; but, on the other hand, the word *stall* or *stool* is clearly not limited to a seat in a chancel or choir. Thus the *Promptorium Parvulorum*, written in the year 1440 (*b*), gives the meaning thus—

Stal of a quere—*stallus*;

and the *Liber Equivocarum* (*c*), quoted by the editor of the *Promptorium Parvulorum* :—

Stalle, be-forne a schoppe; *stallus*, ferculum;

and a somewhat similar application of the word occurs in another early example (*d*) :

Als he was stoken in that *stall*,
He herd byhind him, in a wall,
A dor opend fair and wele,
And tharout came a damysell.

But in reference to church seats, the term stools or stolyng was at first applied to seats for the congregation, generally standing in one place in the church, though capable of

Creyke of Beverley, esquire, dated 6 Sept. 1488 (*Testamenta Eboracensia*, Surtees Society, Vol. IV. p. 35), which mentions “*iiij Cathedra, cum quinque Scabellis*,” valued at *iiij^s iiij^d*.

(*b*) *Promptorium Parvulorum*, Ed. by Albert Way, Esq., F.S.A. (Camden Society), *s. v.*

(*c*) *Ibid.*

(*d*) *Romance of Yvaine and Gawin*, 695 (quoted in Halliwell’s *Archæological Dictionary*, *s. v.* stall).

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Stall.

being moved. Thus in the will of John Baret, in 1463(*e*), where he gives directions for his burial, it proceeds—

No stoon to be steryd of my grave, but a pet to be maad vnder the ground sille ther (where) my lady Schardelowe was wont to sitte, the stoolys removyd and the body put in as neer vndyr my grave as may be wythoutt hurt to the seid grave.

And in 1483 we find a precisely parallel example in the will of John Bockyng (*f*), who directs his burial near the stall in which the wife of Richard Lylle and Margaret his own wife sit.

And we may trace the continued use of the word without difficulty. Thus in 1508 Robert Gardiner, of Norwich, wills (*g*) that all the new stoolynge in the church and aisles of St. Andrew, Norwich, be made at his cost. So in the Church Inventories and Accounts of Essex, in 1552 and 1553 (*h*), are charges for mending the stooles or seates in the churches of Shopland and Barlynge. In 1620—30 there is mention of a stall or pewe for gentlewomen in Durham Cathedral (*i*).

Leystall.

The word *Leystall* or *Leystow*, however, meant a sleeping-place, not for the living, but for the dead. This appears with tolerable clearness from the parish accounts of St. Mary Woolchurch Haw, London (*k*):—

1539—1540. Casuall Receits—Receyved for the

(*e*) *Bury Wills and Inventories* (Camden Society, Vol. XLIX.), p. 15.

(*f*) *Testamenta Eboracensia* (Surtees Society), Vol. IV. p. 235.

(*g*) Blomefield's *History of Norfolk* (fol. ed.), Vol. II. p. 703.

(*h*) *Essex Church Inventories and Accounts*, edited by H. W. King, Esq.; *Essex Archaeological Society's Proceedings*, Vol. V. p. 123; Vol. IV. p. 216.

(*i*) *Cosin MSS.*; Camden Society, Vol. XV. p. 16.

(*k*) St. Mary Woolchurch Haw, Churchwardens' Accounts.

Laistow of James Stephyns wyfe's mother in the Cloister	ij ^s	BOOK I. CH. II.
1540—1541. Receyved for the Laistow, in the cloister, of Sir Tobye priest	ij ^s	Leystall.

And subsequent entries to the same effect, but with the addition of a knyll with the great bell, when the charge was always 13s. 4d. The word occurs elsewhere, as in the Ludlow accounts, but its meaning there is not clear, and the learned editor notes (*l*) that it appears to have had some relation to a pew, and in fact in one item it is not explainable by either signification, viz. (*m*):

1540. Reseyved of ser Richard Bensone
for his Lent leystalle vj^s viij^d

These accounts also speak of *pews* and *pew places* (or *Pew-places*. sites for pews), and also, almost at the same date, mention a burial place as a pit; thus (*n*):—

1542. Item of mistres Sellmon for a pytt vj^s viij^d
Item more of her for a pewe iiij^s iiij^d
1545. Receyvede for mr. Harez pytt(*o*) vj^s viij^d
1654. Receved of mr. Richard Langford
for his father's pytt vj^s viij^d

And yet, in other entries, we note the use of the word *Leystalle*. leystalle(*p*):—

1540. Reseyved of mastere Foxe for mr.
Warden's leystalle vj^s viij^d
1543. Receyvede of Alis fñrences for her
husbandes lestalle vj^s viij^d

(*l*) *Ludlow Churchwardens' Accounts*, edited by Thos. Wright, Esq. F.S.A. (Camden Society, Vol. CII.), p. 5.

(*m*) Ibid.

(*n*) Ibid. p. 12.

(*o*) Ibid. pp. 24, 89.

(*p*) Ibid. pp. 5, 16.

BOOK I.
CH. II.

It will be observed that in each case the amount charged for a pit or a leystalle is the same, and that the payment is made by one person on behalf of another, which would be as unlikely in the case of a pew as it would be necessary in the case of a burial place.

Various stalls.

In Law dictionaries, published respectively in 1615 (*q*) and 1670 (*r*), *stallage* is defined as money paid for the space occupied by stalls pitched in fairs or markets. In Barclay's translation of the *Stultifera Navis*, originally published in 1509, and a second edition in 1570, he speaks of stalls in the tavern as well as in the church (*s*):—

The tauerne is open before the Church be,
The pottes are ronge as bels of dronkennes,
Before the Church bels with great solemnitie,
There here these wretches their mattins and their masse:
Who listeth to take heede shall often see doubtles,
The stalles of the tauerne stuffed nere eche one,
When in the Church stalles he shall see fewe or none.

In fact, at the present day, we speak of a *stall* at the opera, or in a market,—in which sense Milton made use of the word *pew* (*t*),—or in a bazaar; *stalls* for horses or cattle; or even a *finger-stall*. Yet at the same time we limit the meaning of the word *stall*, as a seat, to that in the chancel of a church or at an opera-house, where each person has a defined seat to himself, parted off from his neighbour; and the word *stool* is limited to a wooden seat or chair without a back, or to a low foot-stool.

Inexactness of
terms used.

The difficulty of attaching an exact meaning to the

(*q*) *Exposition of Terms of the Law*, A.D. 1615, s. v.

(*r*) Blount's *Glossographia, or Dictionary interpreting hard Words*; A.D. 1670, s. v.

(*s*) Sebastian Brant's *Stultifera Navis*, translated by Alexander Barclay, priest: *Of fooles that keepe not the holy day*: p. 191.

(*t*) Milton's *Prose Works*, Birch's edition, Vol. I. p. 627.

word *stall* is increased by the fact, that in the *Promptorium* (*u*) “Forme” is defined as “long stoole, sponda;” and in the same work and in two other vocabularies of the fifteenth century (*v*), stool is Latinized by “Scabellum;” and that word, though sometimes expressly put as the synonyme for pew (as in the will of William Philpot, dated in 1474 (*x*)—*scabella voc^r. le Pewes*), is also about the same date applied to house furniture, as in the inventory of the goods of Thomas Creyke, in 1488 (*y*), where occurs the mention of “III. cathedræ cum quinque scabellis.”

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CH. II.

Inexactness of
terms used.

Then we find that *scabellum* is put as a synonyme of *sedile* in the will of Sir Thomas Beauchamp, dated in 1428 (*z*): thus—“extra sedile sive scabellum in quo solebam residere.”

The word *settle* is no doubt derived from *sedile*, and is so translated in an *English Vocabulary* and a *Nominale* respectively of the fifteenth century (*a*).

Hoc sedile—lang-sedylle.

Hoc sedile—a long-setylle.

And the words *sedile*, *seje*, and *sete* are placed in the *Promptorium Parvulorum* as synonymes of each other (*b*); and the expression in a will dated in 1453 (*c*)—*sedile vocat. Anglice pewe*—and again in 1693 (*d*)—*sedia sive subsellias, Anglice pews*—brings us round to much

(*u*) *Promptorium Parvulorum*, s. v. *Stool*.

(*v*) *Volume of Vocabularies*, edited by Thomas Wright, Esq., F.S.A., pp. 197 and 232.

(*x*) *Consistory Court of Canterbury*, Vol. II. fol. (late 327, now) 318.

(*y*) *Testamenta Eboracensia* (Surtees Society), Vol. IV. p. 35.

(*z*) *Ibid.* p. 415.

(*a*) *Volume of Vocabularies*, edited by Mr. Wright; *English Vocabulary*, p. 197, and *Nominale*, p. 232.

(*b*) *Promptorium Parvulorum*, s. v. *Seje* and *Seate*.

(*c*) Will of William Wintringham, Lambeth Registry, 291, *Kemp*.

(*d*) *Lutwyche's Reports*, 1032.

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CH. II.

Inexactness of
terms used.

the same point as that from which we started, and appears to demonstrate that for seats other than those in the choir, these various terms were used without any special or definite distinction.

The words *sege* and *seete* may no doubt be identified as the correlative, or corruption of *sedes*, as in the Italian *sedia*, and the French *siège*; and in the same way the word *settle* is derivable from *sedile*, and means a seat merely, as in fact it is translated in the *English Vocabulary* and *Nominale* before referred to, and respectively of the fifteenth century (*e*).

The *Catholicon*, which was printed in 1469, omits all of these terms (*f*).

The meaning of the word *scamnum* appears to be limited to a bynke or benche (*g*); and *cathedra* was probably applied only to a chair. Among these examples we find the words—

Stalls,

Scabella,

Sedile,

Subsellia,

expressly used as synonymous with pews.

The word *pew* does not occur in the *Promptorium*, from which we may conclude that it was not in common use at that date, c. 1440. The word *desk* is also absent.

Various spelling
ing of the word
Pew.

Various modes of spelling occur: we find the word written *pew*, *pue* (*h*), *pwe* (*i*), *puwe* (*j*), *piew* (*k*).

(*e*) *A Volume of Vocabularies; English Vocabulary* at p. 197, and *Nominale* at p. 232.

(*f*) *Catholicon*; edition printed at Augsburg; fol., A.D. 1469.

(*g*) *Volume of Vocabularies*, pp. 197, 232, 261.

(*h*) *Piers Plowman's Vision*, Passus VII.; Cotton MS. Vespasian B. 16, dating c. 1390.

(*i*) St. Botolph, Aldgate, Parish Accounts, A.D. 1554.

(*j*) Whitaker's Ed. of *Piers Plowman* from another MS. rather later, p. 95.

(*k*) Weever's *Funeral Monuments*, p. 493.

But as to the derivation of the English word *pew* or *pue* (so variously spelt), there is great doubt and difficulty. The nearest approximate is the old French word *puie*, meaning a balcony or gallery built upon balks or posts of timber (*l*). But the word as we apply it was not in use in France in the seventeenth century, as we find that "*The Great French Dictionary*" translates (*m*) *pew* or church-seat—Banc; Banc fermé d'une Eglise.

BOOK I.
CH. II.
Spelling.

Skinner (*n*), in 1671, and Richardson (*o*), after him, consider the word to be derived from the Dutch *Puye*, *puyde*—*suggestum*; and the latter adds that the etymology implies that we borrowed our division of the interior of churches into pews from the Dutch, but gives no authority for the suggestion: if that had been the case, there can be no doubt we should find many early examples still existing; but the fact is otherwise. The earliest example of regular benching that we have met with is in the nave of the Cathedral at Soest, in Westphalia, and has this inscription cut in the back of one row:—

Derivation of
word.

© Mensch Bedenck Die Ewigkeit,
Sie Bringet Ein Ewigen Lohn
Sie Bringet Die Ewige Pein
Oder Die Ewige Kron.

(Carving of serpent coiled in a ring, and crossed sword and sceptre.)

(Sword and flagel in saltire.)

(Crown.)

Early foreign
benching.

☞ Anno 1663 (*p*).

This is cut in German letters in the back of a row of seats

(*l*) Walcott's *Sacred Archæology*, s. v. *Pew*, p. 443. It is a serious drawback to the value of this work, which contains a vast mass of important matter, that the author determined for the sake of brevity to omit all reference to authorities.

(*m*) *The Great French Dictionary*, by Guy Miège, gent., fol. 1688, s. v.

(*n*) Skinner's *Etymologicon Linguae Anglicanae*, fol. 1671, s. v.

(*o*) Richardson's *Dictionary*, 4to. ed. 1837, s. v.

(*p*) Oh, man, remember eternity, which brings thee eternal recompence; brings thee an eternal torment, or an eternal crown.

BOOK I.
CH. II.Early foreign
example.

of a late kind of Jacobean character : there are many of the same pattern ; the rest of the seats in the Cathedral, with which indeed the nave is blocked up, are later ; they are unappropriated. The *Glossary of Architecture* (*q*) gives a wood engraving of a bench-end at Dol, in Brittany, but this may be part of the choir-stalls.

Pew-fellow.

A *pew-fellow*, Skinner says (*r*), was merely a fellow or companion in the same seat or situation, as boys of the same class in an enclosed seat.

Webster (*s*) gives the same derivation, and defines a *pew* as an enclosed seat in church and a *pew-fellow* as a companion, referring to Bishop Hall as an authority.

Supposed de-
rivation from
Podium.

There seems perhaps a reasonable presumption that the word comes from the Latin *Podium*. Ducange, amongst other meanings of the word, gives the following, in which it is used in the sense of a seat (*t*):—

Podium. Subsellium, minoribus canonicis in ecclesia Lugdunensi destinatum.

Acta Capit., A.D. 1342:—

Commiserunt prænominatis capitulantibus quod . . . Humbertum de Briot canonicum Lugdunensem subdiaconum ponant ad *Podium*.

Podium. Pars formæ monachicæ, cui Monachi, cum procumbunt, innituntur.

Usus antiqui Ordin. Cisterc., caps. 68 & 69:—

Et paululum a *Podio* semotus, stet usque ad metrum.

Quicumque hymnos incipit stet semotus a *Podio*.

(*q*) *Glossary of Architecture*, Vol. I. p. 282.

(*r*) Skinner's *Etymol. Ling. Angl.*, *s. v.*

(*s*) Webster's *Dictionary*, 4to. ed. 1832, *s. v.*

(*t*) Ducange's *Glossary*, 4th ed. Paris, 1845.

Statuta ejusdem Ord. Ann. 1219:—

Monachis in stallis suis manentibus, dum
antiphona canitur, et semotus a *Podio*.

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CH. II.

Supposed de-
rivation of
word.

Podium, Pogium. Lectrum, analectrum in ecclesiâ,
ad quod gradibus ascenditur.

Cyprianus in *Vita S. Cæsarii Arelat*, num. 17:—

Videntur etiam hodieque securiam ictus in
Podiis et cancellis; dum inde columnarum ex
argento excutiantur ornamenta.

Ordo Romanus:—

In *Pogio* juxta ambonem cum capsâ in qua
subdiaconus idem ponit Evangelium et sigil-
letur.

Alibi:—

Qui ordinandi sunt, stent in *Pogio* sub
gradibus.

Rursum:—

Veniunt usque ad altare, ascendentibus dia-
conibus in *Pogium*, Episcopi et Presbyterii
statuuntur in locis suis, et schola ante altare.

And Carpentier, in his edition of Ducange, gives a
further illustration, dating in 1394 (*u*):—

La suppliante esmue de chaleur, & courroux
a l'entrée de l'alée dudit celier, se tint à *une Puye*,
ou boise qui y estoit.

In the *Catholicon*, printed in 1469 (*x*), the words occur
thus:—

Podio, podias, in *podium* est.

Podium. A pavo, pavis: derivatur hoc, *podium*,
dii, & baculus quem innititur cum sepe terram

(*u*) Carpentier's Edition of Du Cange's *Glossary* (publ. 1766), s. v.

(*x*) *Catholicon*: Edita fratre johanne de janua, ordinis fratrum predi-
cator'. Vindelica (Augsburg), fol. 1469.

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CH. II.

Supposed derivation of word.

ferimus. Unde, quoque, *podium* dicitur ubicunque innititur, Et inde podio, podias, quod componitur *Appodio, appodias; Compodio, dias; Suppodio, dias*. Omnia pro valde inniti, & secundum sunt neuter, quoque, absoluta. Item transitiva activa, ut, *Podio te, Appodio illum, Suppodio istum*; quasi *podium* supponé illi vel podio sustentare vel *podio* facere inniti.

Sedile. *A sedeo, des*; dicitur hoc *sedile, lis*. vellum(?) penultimi producta. Et sunt *sedilia*, loca in quibus quis sedere possit. Unde in *tercio regum*, capitulo X^o. Ed due manus hinc atque inde tenentes *sedile*.

The words *stalla* and *scabellum* do not occur.

Another suggestion is based upon a second meaning of the word *podium*, signifying something to lean upon; thence *appodiare*, and the French *s'appuyer(y)*; but perhaps this derivation is more ingenious than sound.

Raymond, the master of the order of S. John of Jerusalem, in 1118, was surnamed *De Puy*, or *Poggio (z)*. There was also a *Messer Poggio* who wrote a *History of Florence*, in Latin, which was translated into the "Lingua Thoscana" by "Jacopo suo figliuolo," and published at Florence in 1492 (*a*).

There was formerly a famous chapel at Westminster called *Our Lady of the Pue*, but for what reason does not now appear (*b*).

(y) *Hist. of Pucs*, p. 5.

(z) Porter, *History of the Knights of Malta*, Vol. I. p. 24.

(a) *Storia Fiorentina di Messer Poggio*—Firenze, fol., A.D. 1492.

(b) Newcourt's *Repertorium*, s. v.; Weever's *Funeral Monuments*, p. 493; Brayley and Britton's *Hist. of the late Houses of Parliament*, p. 434.

It has been suggested, but without other authority than similarity of sound, that *Pew* by the intermediate *Puy* may have been derived from *puît*, a well or pit; and Ménage (*c*) blames Scaliger for latinizing *M. du Puy's* name by *Puteanus*, “qui veut dire *du Puis*, au lieu de *Podianus*, que fait *du Puy*.” Both Ducange and Ménage consider podium identical with the French word *Puy* or *Pui*, as in the names of several places, as *Le Puy en Velay*, *i. e.* Podium Velauno; *Le Puy Laurens*, and *Le Puy Morin*, are respectively Podium Laurentii and Podium Morini.

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CH. II.

Supposed derivation of word.

The suggested derivation from *Les Pieux* (*d*) has nothing but similarity of sound to recommend it.

Mr. Thomas Wright, the well-known archæologist, is decidedly of opinion (*e*) that the name is not derived from *podium*, because he says that word never meant *pew*, and because it could only have come from the Latin into the English language through the medium of Norman or French, and there does not appear ever to have existed in French any such word with such a meaning. He inclines to think that the word was not of foreign origin, but has been originally a word of popular growth, and it appears not to have been in use as belonging to correct literature until rather a late date; and that the derivation is long forgotten.

From the mention in an English will, dated in 1475 (*f*),

(*c*) Ménage, *Dictionnaire Etymologique*, fol., 1694, p. 604.

(*d*) Query by “John de Ford” in *Notes and Queries*, 2nd series, Vol. XI. p. 189.

(*e*) *Journal of Archæological Association*, Vol. XXIII. p. 322.

(*f*) Will of William Philpot, of Godmersham, Cons. Ct. of Cant. Vol. II. (formerly fol. 327, now) fol. 318.

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CH. II.

Supposed derivation of word.

of new seats called "*Le Pewis*," it was ingeniously suggested (*g*) that it may be a corruption of *Pervis*, the *Parvise* or *Paradise*, used occasionally by our old writers to signify an enclosure; but if so, there seems no reason why it should not have been so written.

There was established at an early period in London, *La Confrerie du Pui*, as appears by an ordinance dating apparently in the reign of King Edward I. (*h*); it seems to have been previously established, and that this document was for the purpose of regulating it. The preamble runs thus:—

LE FESTE DE PUI.

En le honour de Dieu, Madame Seinte Marie, touz Seinz e toutes Seintes; e en le honour nostre Seignour le Roy e touz les Barons du pais; e por loial amour ensancier. Et por ceo qe la ville de Lundres soit renomee de touz biens en tuz lieus; et por ceo qe jolietes, pais, honestez, douceur, deboneiretes, e bon amour, sanz infinite, soit maintenue—E pur ceo qe touz biens soient mis avaunt, e touz maus arriere—Li amerous compaignoun qui sont demoraunt e repairant en la bone cite de Lundres ount ordinee, conferme et establie une feste ke hom apele "*PUI*." Et por ceo qe la devaunt dite feste soit maintenue en pais e en amour.

Later on it is spoken of as *Le gentil Pui de Londres*, and the objects of its foundation and encouragement were joviality and charity. Unfortunately the document affords no clue to its peculiar name.

(*g*) Note by A(rthur) A(shpitel) in *Notes and Queries*, 2nd series, Vol. VIII. p. 204.

(*h*) *Liber Costumarum*; printed by the Record Office, Vol. I. p. 216.

It may be just necessary to refer to a very similar word which occurs at an early date, but with evidently quite a different meaning. In the Year Book of Henry IV. is this passage (*i*), referring to the church and churchyard:—

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CH. II.
—
Supposed de-
rivation.

Il est voyer de chose annexe al Esglise, ou al Glebe, le Parson avera action, come d'arbers coupés, ou d'herbes *pués* en le cimetorie; . . . mes de les ornements del Esglise l'action gist par les Gardeins.

Cotgrave gives the meaning of the word as applied to cutting a vine (*k*):—

Puer la vigne, to cut a vine; or, as *pouèr-pouer*, to mount, ascend, go up; or to hale as Bargemen doe against wind and tide; also to pile, or heap up; whence *pouèr la vigne*, to raise the beds of a Vineyard into ridges.

(*i*) *Year Book*, Henry IV. s. 12 (A.D. 1410).

(*k*) Cotgrave's *Dictionary*, Howell's ed., fol. Lond. 1640, *s. v.*

CHAPTER III.

EARLY USE OF WORD "PEW."

BOOK I.
CH. III.

Occurring in
Piers Plow-
man.

THE earliest use of the word in English appears to be that which has often been quoted as occurring in one version of the *Vision of Piers Plowman*, viz. the transcript by Dancaester, very shortly after the year 1362 (*a*). Of this it may be remarked that the passage does not occur in the two versions cited, respectively, as the A. or Vernon Text, and the B. or Crowley Text, both recently printed by the the Early English Text Society, nor in the text which Mr. Wright edited. In the opinion of the Rev. Walter W. Skeat, the editor of the Early English Text series, the date is about the year 1390, and Whitaker's text rather later.

Wraþþe, in his confession, says (*b*):—

Among wyves and widewes . am i wonet to sitte

J parroket in pues . ye person hit knoweþ

How litel i louye . lette at þe stile

þfor sche hadde holibred or i . myn herte bi gon to
change

Afturward after mete . sche and i chidden

And i wraþþe was i war.

(*a*) *Piers Plowman's Vision*, Passus VII., Whitaker's ed. p. 95. The Rev. Walter W. Skeat, the editor of the Early English Text Society's version of *Piers Plowman*, considers the date of Text A. to be between 1370 and 1380; the B. Text, 1377; and the C. (Whitaker's) Text, rather later.

(*b*) *Piers Plowman's Vision*, Passus VII.; Cotton MS. Vespasian, B. 16, fol. 27.

Whitaker's text differs considerably in orthography; and we copy it below because it is the text which has been quoted by two or three previous writers, who, by the introduction of punctuation (and probably by copying one from another), assume that the fact of Wratthe being yparroked in puwes was known to the parson; whereas it would certainly seem that it was the jealousy of Letice which the parson was aware of.

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CH. III.

In *Piers Plowman*.

Wratthe says,—

Among wyues and wodewes ich am ywoned sute,
Yparroked in puwes ; þe pson hit knoweth
How lytel ich lovye Letice at þe style
For hue had haly bred er ich; my herte bygan to
chaunge
Afterward; after mete hue and ich chidde
And I Wratthe was war.

The word *puwe* does not occur in the *Promptorium Parvulorum*, nor in the *Catholicon*, nor in Palsgrave's *Dictionary*; in the former, the word *parrok* is thus explained (c):—

PARROK, or Cowle—Saginarium, Cavea, pargulus.
PARROK, or cabañ—preteriolum, capana.
PARROKKYÑ, or speryñ in streyte place, closyn in
streythley ; Intrudo, obtrudo.

The word
Parrock.

It is in fact the Anglo-Saxon word (d)—

Pearroc, *pearruc*—A park, parruck, paddock, an
enclosure ; septum ferarium, saltus, clausura.

(c) *Promptorium Parvulorum*, edited, with vast research and labour, by Albert Way, Esq., F.S.A., for the Camden Society, s. v.

(d) Bosworth's *Anglo-Saxon Dictionary*, s. v.

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CH. III.

The word
Parrock.

Ducange explains the word thus (*e*):—

PARROC—*Parcus minor, à Saxon Peaproc; Locus ad ferarum costodiam: 1182.*

And Carpentier, in his edition and extension of Ducange (*f*):—

PARRIGO, PARRAGO. *Haud satis mihi aperta est vocis hujus significatio; ut est Parrigue, Prædium rusticum muris fossisque circumseptum intelligo, in Lit. remiss. an. 1371.*

Les Anglois se logerent en la dite ville (du Lude) & visiterent une Parrique forte de muraille & une coline près dudit fort.

And Palsgrave (originally published in 1530) agrees with Ducange (*g*):—

PARROCKE, a lytell parke--parquet.

And in Peter Levins' *Manipulus Vocabularum* (*h*):—

PAROCKE, fundus.

*Pew, in Boke
of Nurture.*

We do not meet with the word *pew* again during the long period between the date of *Piers Plowman*, and near the middle of the fifteenth century, when it occurs in Russell's *Boke of Nurture* (*i*), believed by the learned Editor to have been written ante 1447:—

Prynce or prelate, if hit be, or any oþer potestate,
or he entur in to þe church, be it erly or late,

(*e*) Du Cange, *Glossarium*, s. v. (ed. 1736).

(*f*) Carpentier's edition of Du Cange's *Glossary*, fol., 1766, s. v.

(*g*) Palsgrave; *L'Eclaircissement de la Langue Française*, 1530, 4to. ed., Paris, 1852, p. 252.

(*h*) *Manipulus Vocabularum*; reprinted by the Camden Society and by the Early English Text Society, col. 158.

(*i*) Printed by the Early English Text Society; edited by Mr. Furnivall: lines 915—8.

perceve all þynge for his <i>pewe</i> þat it may be made preparate,	Book I. Ch. III.
boþe cosshyn carpet & curteyn, bedes & boke, forgete not that.	Boke of Nurtare.

In 1449 William Bruges, Garter King at Arms, by his Will directs and bequeaths as follows (*k*):—

Pews mentioned in early Wills. In 1449.

Y bequethe and ordeyne yat ye gret framd yat y have lying in the gret berne in my place at kentisshton, that it be sold to the most value, and ye money rising thereof to be bestowed upon ye complesshynge & reudyng of ye said chirch of Staunford; yat is to be understand in coþyng w^t lede, glasyng, & makyng of *pleyn desques* & of a pleyn Radeleft and in *puying* of the said chirch, nourt curiously but pleyuly; and in pavyng of all the hole chirch, body & quere, w^t brode holand Tyle.

In 1451 Robert Frense, of Dickleburg, Norfolk (*l*), by his Will directs his burial at All Hallows Church, and a gravestone to be laid over him, without *the Pewe* on the South side of the *North Pewe*, with his name engraved thereon. The stone is described by Blomefield, as in the Middle Alley, though the brass is now gone.

In 1451.

The wording leads to the inference that there were but two pews, one on the North and one on South, apparently at the East end of the nave, immediately before the Rood-screen across the chancel arch; an arrangement which appears by various other examples to have been not unfrequently the case elsewhere.

1453. The Will of William Wintringham, of Lon-

In 1453.

(*k*) Lambeth Registry, 187, *Stafford*. The Rev. H. B. Browning, the Rector, says these no longer exist.

(*l*) Blomefield's *History of Norfolk*, Vol. I. p. 132, and n.

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CH. III.

Pews men-
tioned in early
Wills.

don (*m*), directs his burial in the church of St. Mary Magdalen, Old Fish Street, and that an inscription in brass be set in the wall “ad sedile, vocal anglice *pewe*, nuper dicte Katerine.”

In 1454.

1454. John Younge of Herne, Kent (*n*), by his Will, gave “to the fabric of the churche of Herne, viz. to make seats called *puyinge*, x marks.”

In 1474.

1474. And so William Philpot, of Godmersham (*o*), leaves a legacy to build anew the seats called “*le pewes*.”

Although the word *pew* had become the usual term for church-seats, whether what we should now term *stalls*, or *benches*, yet it did not acquire any very precise meaning for centuries afterwards; nor, indeed, until what may be properly termed modern times.

Sheep in Pews
at Smithfield.

The term *pew* and its derivative *pew-fellow*, though generally used in reference to church seats, was not even exclusively so applied. Thus Milton writes (*p*):—

Certainly it is not necessary to the attainment of christian knowledge that men should sit all their life long at the feet of a pulpited divine; while he, a lollard indeed over his elbow-cushion, in almost the seventh part of forty or fifty years, teaches them scarce half the principles of religion; and his sheep oftentimes sit the while to as little purpose of benefitting, as the sheep in their *pews* at Smithfield.

(*m*) Lambeth Registry, 291, *Kemp*.

(*n*) *Testamenta Vetusta*, p. 289.

(*o*) *Consistory Court of Canterbury*, Vol. II. (formerly fol. 327, now) fol. 318.

(*p*) Milton's Prose Works, Birch's edition, Vol. I. p. 167.

So Shakspeare. Edgar, in the play of King Lear, feigning madness, says (*q*):—

BOOK I.
CH. III.

Who gives anything to poor Tom? whom the foul fiend hath led through fire and through flame: hath laid knives under his pillow and halters in his *pew*.

Word used by
Shakspeare,

Mad Tom's character is a satire on the pretended possession of John Darrell and others (*r*). In the examination of these wretched creatures we find that knives and halters were said to have been laid under their beds, and in their chairs. Pew never meant a chair, but a bench. The large moveable seats in old-fashioned inns, which have a back both above and below, to keep off the wind, lead us to remember that Edgar afterwards says of himself, "Wine loved I deeply, dice dearly;" and there is therefore some reason for setting down the pew in the above passage as an ale-bench, where a halter might well have been laid; and pew-fellow with them, as the term is applied here, mean a boon companion. It will have been remarked in the quotation from the *Stultifera Navis*, that the seats in church and in the tavern were equally termed stalls.

An earlier example of the expression occurs in "The Proude Wyves Paternoster" (*s*):—

and other
writers of his
period.

To chyrche they be come, this is no lye,
Vnto theyr *pewe* there fore to knele,
Reuerence doynge to the otherby,
With countenance meke and becometh thē wele;

(*q*) *King Lear*, Act III., scene 4.

(*r*) Cambridge Camden Society's *Monumental Brasses*, p. 37.

(*s*) *The Proude Wyues Pater noster, that wolde go gaye, and vndyd her husbonde and went her naye*. Printed by John Kynge, c. 1560: re-printed in *Select Pieces of Popular Poetry from early copies*, in 1817, Vol. II. p. 144.

BOOK I.
CH. III.

Word used at
time of Shak-
speare.

Than syt they downe, eche gossep other by,
Beholdyng theyr aparell of eyther syde.
Yf the one be gaier than the other that doth espie,
Than she thynketh her *felow*e set all full of pryde.

Pew-fellow.

Johnson, in his notes to his edition of Shakspeare's works (*t*), says that *Pue-fellow* seems to mean *companion*, and that "we have now a new phrase, nearly equivalent, by which we say of persons in the same difficulties, that they are *in the same box*." He adds, on the authority of Sir John Hawkins, that the word is yet (*i. e.* in 1785) in use.

Shakspeare uses the expression in another passage (*u*):—

And makes her *pew-fellow* with others moan.

Meaning, to associate her with the sufferings of others.

And so it is used by Decker and Webster, 1607 (*v*):—

The Jest shal be a stock to maintain vs and our *pew-fellowes* in laughing at cristnings, cryings out, and vpsittings this 12 month.

And again (*x*):—

'Sfoot, if he should come before a church-warden, he wud make him *peu-fellow* with a Lord's Steward, at least.

In Bishop Andrewes' sermons in Lent, A.D. 1596 (*y*):—

Look how Esau speaketh *Habeo bona plurima*,

(*t*) Johnson and Steeven's Ed. of *Shakspeare's Plays*. Note on *King Lear*, Vol. VII. p. 123.

(*u*) *Richard III.*, Act IV., scene 4 (publ. 1591).

(*v*) *West-VVard Hoe*, Act V., scene 1.

(*x*) *North-VVard Hoe*, Act II., scene 1.

(*y*) *Library of Anglo-Catholic Theology*, Vol. II. p. 91.

‘I have enough, my brother,’ and as his *pew-fellow* here, *Anima habes*, Soul, thou hast goods enough, &c.

BOOK I.
CH. III.
Pew-fellow.

And Webster (*z*) refers to a similar use of the expression by Bishop Hall.

In Molle’s translation of Camerarius, published in 1621, occurs this passage (*a*) :—

It hapneth also most often in Couents that in the Churches there are scene spirits without heads, apparelled like Monkes and Nunnes sitting in the *pewes* of the right Monkes and Nunnes which were to die soone after.

What we should now call the reading-desk was spoken of as the Minister’s Pew; of which a few examples will suffice.

In the Inventory of Church Goods of All Hallows-in-the-Wall, London, in the 4th year of King Edward VI., is a payment of 12^d for turning the priest’s pew in the quire (*b*), which was probably to convert it into a reading-desk of modern use. So in the Inventory of St. Dionis Backchurch, London (*c*), is a payment of 2^s 8^d for a wainscot for the pews in the quire; and at St. Sepulchre, Newgate, London (*d*), in the second year of King Edward VI., there was paid 2^s “for cutting of the pew in the quire to set the great organs in the place.”

(*z*) Webster’s *Dictionary*, *s. v.*

(*a*) *Historical Meditations*, by P. Camerarius, done into English by John Molle, Esq., fol. Lond. 1621, p. 284.

(*b*) Extracts from State Papers, *Church Review*, 21 Oct. 1865.

(*c*) *Ibid.*

(*d*) *Ibid.*, 14 Oct. 1865.

BOOK I.
CH. III.Minister's
Pew.

At St. Peter Chepe, London, in the parish accounts occurs this item (*e*):—

Paid for ij matts for the *pewe* wherein Mr.
Parson saithe the service, the xth daie of
November 1568 vjd

And in the *Cornhill Accounts* (*f*):—

1605. Paid for mending the minister's Pewe
& for hindges viij^d

An Act of Court, in 1613, relating to a controversy between one of the parishioners of Margaretting, Essex (*g*), concerning the placing of the minister's reading pewe in some convenient place, records the decision of the Chancellor granting certain seats to one Mr. Tanfield, his heires, or every owner of the Manor of Copfold Hall, and the Minister's reading pewe to remain where it now is.

In 1632, in a suit in the Consistory Court of Peterborough (*h*), the Rev. Mathew Billinge, the incumbent of Canon's Thorpe, alleged that,—

John Butlin did at the time of y^e ptended misde-
meanour, of purpose to affront & disgrace the s^d
Mr. Billinge at y^e time of his Catechizinge, did of
purpose remove out of his usuall seat where he used
to sitt & did set in a seate very neare to y^e *minis-*
ters pue or seat.

Item, that the s^d Mr. Martin Bullinge at or
before the ptended time of the s^d misdemeanour did

(*e*) Extracts from Churchwardens' Accounts, by Rev. Sparrow Simpson, *Arch. Assoc. Journal*, Vol. XXIV. p. 262.

(*f*) *Cornhill Accounts*, p. 194.

(*g*) *Vicar-General's Books*, Vol. II. fol. cxxi.

(*h*) Peterborough Diocesan Registry, *Registrum Stamford*, Vol. II. fols. cxxxiv, cxxxv.

in a modest, sober, & discreet manner sitt or stand
in his *pue*, or *ministeriall seat* in the s^d church of
Kanon's thorpe.

BOOK I.
CH. III.

Minister's
Pew.

And shortly afterwards it is also called the *Reader's Pew*.
Pew (i):—

Lessons and Chapters were indeed read in the body of
the Church among the people, out of the *Reader's Pew*, or
Tribunall (as *Saint Cyprian* calls it), and were part of the
First Service, at which the *Catechumeni* were present.

So wrote Dr. Pocklington in 1637; and the same term
was used twenty years later by Christopher Harvey in
his verses, in excellent imitation of the style of George
Herbert (*j*):—

But, if my Pulpit-hopes shall all prove vain,
I'll back unto the reading Pue again.

The Pulpit.

I doubt their preaching is not always true,
Whose way to th' Pulpit's not the reading Pue.

The Reading Pue.

Bishop Burnet, in 1692, inquires (*k*):—

Have you in your said Church or Chappel a con-
venient seat or *Pew* for your minister to read Divine
Service in?

It is perfectly apparent that the word as here used
means what we should now term stalls, and not pews.
Probably Bale referred to a throne somewhat like a

(i) Pocklington's *Altare Christianum*, first ed. p. 91.

(j) *The Synagogue*, by Christopher Harvey, p. 18; p. 13.

(k) Burnet's *Visitation Articles for the Diocese of Sarum*; Sparrow's
Collection, p. 308.

BOOK I.
CH. III.Emperor's
Pew.

bishop's throne in the choir of a cathedral, in his story of the Good Emperor Henry IV., labouring to remove abuses (*l*):—

This perceuing, Hildebrand, which was a religious maintainer of all these, sought by his preuy trayttours to dyspatche hym. And on a day whyles thys vertuouse emproure was in prayer, he hyred a desperate knaue to laye stones of great wayghte vpon the roufe beames of the temple, ryght over hys *prayenge pewe*, and to lete them fal upō hym to his utter destructyon. But se the ryghteouse hande of God. One of these Stones, beyng more than thys wretche could well rule, bore hym downe to the grounde and so slewe hym.

Bishop's Pew.

Pepys, in his *Diary* (*m*), speaks of the bishop's raised throne in St. Paul's Cathedral as "the Pue,"—thus:—

1663-4: Feb. 28 (Lord's Day). Up and walked to St. Pauls, and both before and after the sermon, I was most impatiently troubled at the quire, the worst that ever I heard. But what was extraordinary, the Bishop of London, who sat there in the *pew* made a'purpose for him, by the pulpitt, do give the last blessing to the congregation; which was, he being a comely old man, a very decent thing, methought.

Pew at theatre. So he also speaks of a pew at Whitehall theatre (*n*):—

To Whitehall; and there by means of Mr. Cooling, did get into the play, the only one we have seen

(*l*) Bale's *English Votaries*, 2nd part, F. 1 (pub. 1550). This book is one of the grossest works ever written under the pretence of religion. The above is quite exceptionally unobjectionable.

(*m*) Pepys' *Diary*, Bohn's edition, Vol. II. p. 101.

(*n*) *Ibid.*, 15 Feb. 1668-9, Vol. IV. p. 103.

this winter; it was “The Five Hours’ Adventure;”
 but I sat so far I could not hear well, nor was there
 any pretty woman that I did see, but my wife, who
 sat in my *Lady Fox’s pew*, with her.

BOOK I.
 CH. III.

 Pew at theatre.

And two days later, he uses the same term for his seat at church (*o*):—

At church; there was my Lord Brouncker and Mrs. Williams in our *pew*; the first time they were ever there, or that I knew either of them would go to church.

In the *Mort d’Arthure*, “reduced into Englysshe by Syr Thomas Malory, knight,” printed by Caxton in 1485, occurs the following mention of a pew (*p*):—

Chantry called
 a Pew.

Syr Percyuale . . . rode tyl euensonge tyme. And thenne he herd a klok smyte, and theñe he was ware of an hows *closed* wel with walles and depe dyches, and there he knocked at the gate, and was lete in, and he alyght and was ledde vnto a chamber and soone he was vnarmed. And there he had ryght good chere alle that nyghte, and on the morne he herd his masse, and in the monastery he fonde a preest redy at the aulter. And on the ryght syde he sawe a *pewe closyd with yron*.

This passage has been quoted as a proof that there were pews with doors at the date when the work was published—in 1485. If the word *pew* be here understood in the sense in which it is now understood, the door was of iron—a very curious example, and absolutely unique. But,

(*o*) Pepys’ *Diary*, 17 Feb., Vol. IV. p. 105.

(*p*) Sir Thomas Malory’s *Mort d’Arthure*, book 14, cap. 3, Southey’s edition, Vol. II. p. 234.

BOOK I.
CH. III.

Chantry called
a Pew.

it will be observed, the house (and not the gate, as it distinctly appears) was closed with walls and deep ditches, and the pew was closed with iron: *closed*, therefore, evidently means *enclosed*. And with the various instances in which the word *pew* was used merely to signify an enclosure, there can be little doubt that the proper solution of the passage is, that he saw on the right side of the chancel a chantry chapel enclosed with an iron *parclose*, or screen, or what the French call a *grille*.

There can be little doubt that it was some such enclosure which is referred to in the "*Supplication of the Poore Commons*," printed in 1546 (*q*):—

When youre Highnes gaue commaundement that thei shoulde se that there was in euery parysh church, within thys your Highnes realme, one Byble at the least set at libertie, so that euery man myght frely come to it, and read therin, such thynges as should be for his consolation, manye of this wicked generation, as well preystes as other faythful adherentes, wuld pluck it other into the quyre, other elles into som *pue*, where pore men durst not presume to come.

There being at this time no high, large, enclosed compartments, such as we now should call pews, at this date, and there being no reason why poor men should refrain from coming into one bench of a row more than into any other, the meaning is evidently such an enclosure as a chapel. Supposing, however, that there had been private pews, no one at all except the owner would have been entitled to

(*q*) *A Supplication of the Poore Commons*, addressed to King Henry VIII., in 1546. Reprinted by the Early English Text Society, extra series, Vol. XIII. p. 67.

admission; rich as well as poor men would have possessed no right of access; it would not therefore have formed a grievance on the side of the poor.

BOOK I.
CH. III.

Chantry or
Pew.

We also find some mention of a Shriving-pew, no doubt used at confessions. Thus in 1515, a penny is charged in the accounts of the Churchwardens of St. Margaret Pattens, London, for dressyng of the yrons of the Shrevyng pew (*r*); and at St. Michael, Cornhill, such a structure was taken down in 1548 (*s*):—

Itm̃ payd to the Joyner for takynge downe the
Shryvyng pew & makynge another pew in
the same place iij^s

What was the form or nature of this structure, or its position in the church, we are unable to ascertain. It is not at all likely that it in any way resembled the sentry-box arrangement now used for the purpose in France and some parts of the continent, for that is known not to have been adopted there until a considerably later date; in fact, not before the seventeenth century (*t*). A suggestion that the *yrons*, in the first-mentioned example of a shriving-pew, were a *grille*, does not appear to have sufficient foundation, for there seems no object which would have been attained by shutting up the priest and penitent in a cage, nor were iron *grilles* much used in this country—in fact, there is no corresponding word in the English language. Perhaps the shriving-pew was a low square enclosure, generally similar

(*r*) Notes from St. Margaret Patten's Accounts, *The Sacristy* for 1871, p. 259.

(*s*) *St. Michael, Cornhill, Accounts*, p. 69, and *Journal of the Archaeological Association*, Vol. XXIII. p. 325.

(*t*) *Proceedings of the Society of Antiquaries of London*, 2nd series, Vol. IV. p. 415.

BOOK I.
CH. III.

Shriving-Pew.

to the font pew which is occasionally spoken of about the same period.

From the rare mention of a shriving-pew, there can be little doubt that it was a most unusual thing; and as the two examples we have met with are both dated in the sixteenth century, it seems probable that they may have been an innovation not very long antecedent to the period of the Reformation, when their destruction might be safely anticipated.



CHAPTER IV.

CLERGY SEATS: EARLY SEATS CONTINUED.

BOOK I.
CH. IV.

THE most frequent mention of church seats relates distinctly to those for the clergy, and situated in the choir, as in the following examples; and applying this evidence to subsequent illustrations we may reasonably conclude that in many other cases, which might otherwise have been doubtful, the reference is to seats for the clergy:—

Early seats;
for clergy.

1403. John de Scarle (*a*), clericus (late Lord Chancellor), by his will bequeaths:—

Ad stalla, sive deskes, faciendum in cancello ibidem (i. e. ecclesiæ de Wolpit) xls

1428. Sir Thomas Beauchamp (*b*), of Kingston-upon-Hull, chaplain, by his will directs his body:—

sepeliendum in choro capellæ S̃ti Trinitatis, villæ prædictæ, extra sedile, sive scabellum, in quo solebam residere.

1437. Thomas de Alta Ripa, clericus (*c*), by his will:—

Volo quod liber meus vocatus Pupilla Oculi, cum cathena ferrea fortiter affigatur, in stallo quo sedere solebam, pro expedicione omnium capellanorum.

(*a*) *Testamenta Eboracensia* (Surtees Society), Vol. III. p. 23.

(*b*) *Ibid.* Vol. IV. p. 415.

(*c*) *Ibid.* Vol. II. p. 61.

BOOK I.
CH. IV.

Early seats;
for clergy.

1461. Sir William Lasseles (*d*), chaplain, by his will directs :—

sep. in choro eccles. par. de Bolton Percy, ante *stallum* rectoris.

1467. Hugh Smyth, Rector of Saundeby (*e*), by his will leaves “unum librum vocatum le Byble” to his brother William for life; then to the church of Saundeby; but on no account to be sold :—

sed extat in choro, ad *scabellum* catenatus, ac ibidem sine fine permansurus, ad utilitatem ac profectum in posterum legencium.

1474. Churchwardens’ accounts of the parish of St. Stephen, Walbrook (*f*), probably referring to the choir :—

Payd pur makyng clene of the *pewys* & cherch yerd, the xxij iour decbr̃. an^o E. (4^{ti}) xiiij . vi^d

1479. Peter Shilbotell (*g*) by his will leaves :—

Pro faciendis *sedibus sive stallis* capellanorum in choro eccl. B. M. de Scardeburgh . . . x^{li}

1492. William Poteman, Archdeacon of the East Riding (*h*), by his will directs as follows :—

Volo quod de bonis meis fiat celatura honesta chori, et etiam fiant nova *deskes* honesta, in eodem choro, cum decenti pavimento, &c.

Furniture and
repairs by

1501. At the Visitation of the Diocese of Durham, the

(*d*) *Testamenta Eboracensia*, Vol. II. p. 255.

(*e*) Ibid. Vol. II. p. 283.

(*f*) St. Stephen Walbrook Churchwardens’ Accounts (unpublished).

(*g*) *Testamenta Eboracensia*, Vol. II. p. 255.

(*h*) Ibid. Vol. IV. p. 80.

New Monastery of Durlham (*i*), as Impropriator of Stan-
 ington Church, was monished to make new stalls, in the
 place of those dilapidated, in the choir. The Rector of
 Eggescliffe (*k*) was ordered to amend the stalls in his
 choir.

BOOK I.
 CH. IV.

Rectors and
 Vicars.

Rectors were bound by law to keep in repair the chan-
 cel, for the performance of Divine Service, but there is no
 reason for suggesting that they were bound to provide or
 repair stalls in the nave and aisles for the ease and con-
 venience of the parishioners.

The respective duties of Rectors and Vicars are laid
 down explicitly, and in some detail, in the proceedings of
 the Synod of York under Archbishop Gray, in 1252 (*l*).

Ad *Parochianos*, de rebus ac ornamentis Ecclesiarum
 reparandis pertinere noscuntur per subscripta, sole
 clarius omnibus elucescat; et ideo ordinamus et
 statuimus, ut parochiani nostri omnes et singuli
 existant sic docti in singulis subsequentibus, ut
 sciant et intelligant atque observent totaliter uni-
 versi; viz., quod Calix . . .

Furniture and
 repairs by
 Parishioners.

Then follows a list of nearly fifty different articles,
 including bells and lights, which they are to provide:—

Reparatio Navis Ecclesiæ et constitutio ejusdem, cum
 campanili, interius et exterius . . . navis Ecclesiæ
 et singulis aliis ad ipsos Parochianos pertinere
 noscuntur. Ad *Rectores* vero vel Vicarios, juxta
 varias ordinationes, omnia alia pertinebunt; scilicet
 Cancellus principalis, cum ejusdem reparatione, tam

(*i*) *Injunctions and Ecclesiastical Proceedings under Bishop Barnes*;
 Surtees Society, Vol. XXII. p. 124 (Appendix XXI.).

(*k*) *Ibid.* (Appendix XXX.).

(*l*) Spelman's *Concilia*, p. 292; Wilkins' *Concilia*, Vol. I. p. 698.

BOOK I.
CH. IV.

Furniture and
repairs by
Parishioners.

parietibus quam tecturis et fenestris vitreis eidem pertinentibus, cum *Descis et scamnis*, ac aliis ornamentis honestis, et noverint se Rectores vel Vicarios a locorum ordinariis compelli posse, secundum hanc Constitutionem, ac alias in hac parte probatas.

He is followed in 1280, or 1281, by Archbishop Peckham (*m*), of Canterbury, to the same effect; and by the Constitutions of Merton, under Archbishop Winchelsey, in 1300, or 1305 (*n*). Upon the latter Lyndwood's gloss (*o*) runs thus:—

Interius scil. in dealbatione Parietum; item in *Sedilibus* præparandis (MS. Acton, reparandis), et aliis hujusmodi, quæ pertinent ad decorem Ecclesiæ.

But he gives no authority; his work was published in 1679.

1507. Gilbert Hall, citizen of York (*p*), by his will directs:—

To be beryt in my paresh kyrk of Sancte Meehall's
at Owyse brige end, in the qwere, afore *y^e parysh
Clerk stawyll*.

Early notices
of seats.

We will continue from this point the history of Church Seats, whether under the name of pews or otherwise.

1440. In the transcript, made by Robert Thornton about this year, of the Prose works of Richard Rolle de Hampole (*q*), who died in 1349, occurs this passage:—

Post accepcionem igitur habitûs heremite et relic-

(*m*) Wilkins, Vol. II. p. 49; Spelman, p. 343.

(*n*) Wilkins, Vol. II. p. 280; Spelman, p. 433.

(*o*) Lyndwood's *Provinciale*, p. 253.

(*p*) *Testamenta Eboracensia*, Vol. IV. p. 268.

(*q*) *Works of Richard Rolle of Hampole*, Early English Text Society, preface, p. xviii.

tionem parentum perrexit, at quandam ecclesiam in vigiliâ assumptionis beatissimæ virginis matris Dei, in quâ se posuit ad orandum in loco ubi consors cuiusdam probi armigeri Johannis de Dalton, more consuevit orare. Postquam autem illa ad audiendas vespervas intrauit in ecclesiam, familiare de domo armigeri ipsum de loco sue domine amovere uolebant, sed illa ex humilitate, ne interrumperetur orantis deuocio, non permisit.

BOOK I.
CH. IV.

Early notices
of seats.

This would indicate a habit of occupying a particular spot for the purpose of prayer, but not necessarily any special accommodation for the purpose.

1447. St. Peter Chepe, London, parish accounts(*r*):—

For mendyng of a *pew* next the chirche dor.

This was probably the pew or enclosure by the font; for unless the church was pewed throughout, the position near the door would be the most unlikely place for an ordinary pew, though the usual and appointed place for the font.

1454. The *Black Book of Swaffham* (*s*), Norfolk, contains the following, in the commemoration of benefactors:—

General seat-
ing of church.

Ye shall pray for the sowlys . . . of Thomas Styward and Cecily his wyf which geve i sautyr to the queer; and did *seat-stole* the north syde of the old chirch to the cross alley between the old dooris; and did pathe the middle chirch from the quere door to the seyd alley; and did glase ij wyndows in the quer, and oder ij in the old chirch on the south syde; and give j invitory book, and in money xl s, and other costs.

(*r*) *Archæological Association Journal*, Vol. XXIV. p. 255.

(*s*) Blomefield's *Norfolk*, fol. ed. 1769, Vol. III. p. 511. Their kneeling effigies were then remaining in stained glass in the north clerestory (p. 503).

BOOK I.
CH. IV.Early mention
of Pews.

And of Maister John Bery, sumtyme here parson,
which . . . did make the *stallis* in the queer,
and celid the chancell, with oder costes besides.

1457. The ordinances of the Book of the Church of St. Mary Woolchurch Haw, London, are said to contain (but of this there is room for doubt) a direction that the churchwardens (*t*)—

shall set bothe ryche and pore in the sayd chyrche
in her *pews* y^t longythe.

In parish
Accounts.

1457 to 1474. The churchwardens' accounts of the parish of St. Michael, Cornhill, London, contain numerous entries referring to pews: being nearly of one date, they are here given consecutively for convenience of reference:—

1457. Item payd for an henge for Russes
wyfe's *pewe* (*u*) iiij^d
1459. Itm̄ for amending of the garnettes of
ij *pewes* and for naylt to the same j^d ob.
Itm̄ for amendinge ij menes *pewes*
and j womans *pew*, w^t j^d for nailt
and candell (*x*) vij^d
1460. Itm̄ paid to a carpent^r workyng by
half a day in emendinge of a *pew* iiij^d
Itm̄ for garnettes iiij^d and nayles j^d
spendid in the same *pew* v^d
Itm̄ to a carpent. by a day floryng a
pew and other necessities (*y*) viij^d

(*t*) Quoted in *History of Pews*, p. 100. The book cannot be found, and the authenticity of the extract we will consider subsequently.

(*u*) *Cornhill Churchwardens' Accounts*, p. 11. Most of the following extracts were previously published in the *Archæological Association Journal*, Vol. XXIII. pp. 324 and 325.

(*x*) *Cornhill Churchwardens' Accounts*, pp. 15 and 16.

(*y*) *Ibid.* p. 19.

		BOOK I. CH. IV.
1464. Paymentes—first payde to Henry Chad carpenter, for makyng of <i>pewes</i>	xxiiij ^s	In parish Accounts.
Item for iiij Esterich bordes	xxiiij ^d	
Itm̄ payde for cariage of the said <i>pewes</i> to and fro	iiij ^d	
Item payde for scouchons of the saide <i>pewes</i> (z)	iiij ^d	
1466. Itm̄ payde to a carpenter for mendyng of the <i>pewes</i> and dores (a)	v ^s vj ^d	
1467. Itm̄ payed for wode and cole and for amending of the lede ove ^r my lady Stokkers <i>pew</i>	j ^d ob.	
Itm̄ payed to a smyth for makyng of a lok to Maister Stokkers <i>pew</i> (b)	viiij ^d	
1468. Itm̄ for makyng of ij new <i>pewes</i> in the chirche	viiij ^s	
Itm̄ for amending of the old <i>pewes</i> in the chirche (c)	x ^d	
1469. Itm̄ payed for iiij rat trappes for the chirche	vj ^d	
Itm̄ paid to the Raker for caryng away of the chirche dust when the <i>pewes</i> were made clene (d)	viiij ^d	
1473. Itm̄ for makyng of Mayster Stokker's <i>pew</i>	x ^s ij ^d	
Itm̄ for werkmanship and nayle for ij women <i>pewes</i> (e)	ij ^s vj ^d	
1474. Itm̄ payde for havyng a wey of the cherche dust wan the <i>puyes</i> wer mað clene	iiij ^d	

(z) *Cornhill Churchwardens' Accounts*, p. 26.(a) *Ibid.* p. 31.(c) *Ibid.* p. 37.(b) *Ibid.* p. 35.(d) *Ibid.* p. 40.(e) *Ibid.* pp. 49 and 50.

BOOK I.
CH. IV.Stools, or
stalls, move-
able.

Item payde for translatyng of the	
Meyres <i>pue</i>	x ^s vi ^d
Item payde for makyng of the <i>puyys</i>	
in oure Lady Chappell (<i>f</i>). . .	xiiij ^s

1462. The *Black Book of Swaffham* continues:—

Also for the soule of John Chapman and Catharyne his wyf, the which . . . did make the North Ysle with glasing, *stolyng*, and pathing of the same with marbyl (*g*).

And of John Langman and Agnes his wyffe, which did make all the *great stolys* of both sydes of the myd aley (*h*).

1463. The will of John Baret of Bury directs (*i*):—

My body to be beryed by the awter of Seynt Martyn, namyd also our Ladyes awter, in Seynt Marye Chirche at Bury, under the pcloos of the retourne of the candilbeem, before the ymage of oure Sayyour, and no stoon to be steryd of my grave, but a pet to be maad under the ground sille ther my lady Schardelowe was wont to sitte—the *stoolys* removyd, and the body put in as neer undyr my grave as may be wythoute hurt of the seid grave. . . . (*j*) My *stool* at the grave's ende with the deske and pcloos by, to be awoydid, and the ground maad as lowe as the chirche floor streyght by the grave to the awter.

This was evidently in a chapel, both as being in proximity to an altar other than the high altar, and from the reference

(*f*) *Cornhill Churchwardens' Accounts*, pp. 54 and 55.

(*g*) Blomefield's *Norfolk*, Vol. III. p. 511.

(*h*) *Ibid.* p. 512.

(*i*) *Bury Wills and Inventories* (Camden Society, Vol. XLIX.), p. 15.

(*j*) *Ibid.* p. 39.

to the parclose at the return of the Rood-loft, being the screen between the chancel and that chapel; the “grave” being a monument which he had had prepared in his lifetime.

BOOK I.
CH. IV.

1474. William Philpot, of Godmersham, Kent, by his will bequeathes as follows (*k*):—

Seats, called
Pewes.

Volo q₃ fabricant^r de novo scabella voē *le Pewes* in eadē ecclīa³ de Elmysted sumptibz meis, vidz illud spaciū a loco ubi scs Xpoforus pingit^r, usq₃ ad Angulū muri lapidei ex pte boriali eiusdē ecclīe.

1479. Roger Rokewoode, of Euston, Esquier, by his will (*l*) directs:—

my body to be beryed in the pariche chereche of Euston, befor the chaunsell dore, by syde *the pue*.

The pue, as though there were but one.

1483. John Bokyng (*m*), master of the grammar school, by his will desires to be buried in the south chancel of Rotherham church, near the *stall* in which the wife of Richard Lylle, Bailiff of Rotherham, and Margaret, his (testator's) wife, sit.

1485. Among the parish accounts of St. Mary-at-Hill, Mending Pewes. London (*n*), occur these items of payments:—

Certeyne pavynge, and mendynge of <i>pewes</i>	
in Church	7 ^s 9 ^d
A Carpenter iiij dayes to amende the <i>pewes</i>	
where the old font stode, takyng vj ^d and	
his men, a day	2 ^s 8 ^d

(*k*) *Consistory Court of Canterbury*, Vol. II. (formerly fol. 327, now) fol. 318. Some of these seats exist.

(*l*) *Bury Wills and Inventories* (Camden Society, Vol. XLIX.), p. 50.

(*m*) *Testamenta Eboracensia* (Surtees Society), Vol. IV. p. 141, n.

(*n*) *Nichols' Illustrations*, pp. 96 and 98.

BOOK I.
CH. IV.

Amending.

Chairs and
seats.

It will be noted that the latter entry refers to a pew at the font, and when for some reason the font was placed elsewhere, alterations were consequently necessary.

1491. Dec. 9th (7 Henry VII.). A contract was entered into for the construction of seats and pulpit for the church of Bodmin, Cornwall, then recently rebuilt (*o*):—

Matthy More, Carpynter, shall make or do to be made, yn the parysh churge of Seynt Petrok yn Bodmyn, fully newe *chayrs and seges*, and iiij Renges, thurgh oute all the body of the sayde Churge, after the furme and makying of the chayres and seges yn seynt mary churge of Plympton, that ys to say, the 2 mydde Renges 12 fete and halfe yn lenght, and the 2 syde Renges 7 fete yn lenght; and a convenyent pulpyte yn the saide Prysh Churge of Bodmyn, after the furme and makying of the pulpyte yn the parysh Churge of Mourton yn hemstede; that is to say, wt. suffyeient Tymber, wenscote, and workmanshype accordyng to the chayrs and seges yn the sayde parysh Churge of Plympton, and the sayde pulpyte accordyng to the sayde pulpyte yn the sayde parysh Churge of Mourton, or better, * * thyssyde the fest of myghelmasse that shalbe m^o cccc^{xx} xv (1495): (his fellow contractors supplying the timber, wenscote and materials at Wadebridge, from Wales), * * the whole for the sum of £92 (*p*).

There are some remains of the pulpit and seats still in the church (*q*).

(*o*) Roofed-in in 1472. Davies Gilbert's *History of Cornwall*, Vol. I. p. 100.

(*p*) *The Bodmin Register*, ed. by Rev. John Wallis, vicar, p. 33.

(*q*) *Ibid.* p. 48.

The *History of Pues* (*r*) comments on the magnitude of the sum of £92, thus expended, as contrasted with the cost of rebuilding the church, which it states amounted to £194. But that such was the entire cost of the rebuilding by no means appears from the register: it states that £194: 3s. 6½*d.* was paid for the building in the 9th, 10th and 11th years of Edward IV., but there is nothing to lead to the opinion that such sum was the total cost of the church, which is large and handsome.

BOOK I.
CH. IV.

Chairs and
seats.

1493. All Hallows Staining, London (*s*):—

P^d the xxix day of decembre, to A Carpen^t
for mendyng of *puyys*, and co^vyng of the font

viii^d Parish Ac-
counts.

1494 (*t*):—

P^d to the Raker for caryng away the Dust of
makyng clene the *pues* in the Chirch. . ix^d

(There must have been a considerable accumulation of dust to have cost so much for carrying it away; but perhaps the cleaning was really included, as there is no other charge entered.)

1496. Robert Restwolde, by his will (*u*), leaves to making the steeple and mending the seats in the church of Hedsore, x marks.

Seats and
stools.

1520. St. Andrew Undershaft, London. Stowe says (*x*) that the whole of the north side of the great middle aisle,

(*r*) *History of Pues*, p. 8.

(*s*) All Hallows Staining Parish Accounts. We are indebted to Thomas Milbourn, Esq., for Extracts from the Accounts of this Parish and St. Mary Colechurch and St. Stephen Walbrook.

(*t*) Ibid.

(*u*) *Testamenta Vetusta*, p. 430 (proved 4th January, 1497; it does not state where).

(*x*) Stowe's *Survey of London*, fol. ed. 1720, Book II. p. 66.

BOOK I.
CH. IV.Seats and
stools.

both of body and choir, and also the north aisle, was rebuilt by Stephen Jennings, Mayor, “and the *pews* in the South Chapel, made of his costs as appeareth in every window, and upon the said pews.” He died in 1524.

From the beginning of the sixteenth century the mention of pews and stolllys becomes frequent, and they would appear, in most cases, to be in the body of the church. The following extracts will suffice to show a presumption that they had been erected in many places long before the Reformation; otherwise the necessity for repairs of such substantial wood-work would not have arisen at this date.

1506. Leverton parish accounts (*y*):—

For nayllys to mendyng of y^e *stolllys* in
the kyrke, & for mendyng of the toder
kyrke porche ii^d

1508. Robert Gardiner, Alderman, by his will (*z*):—

I will that all the new *stoolynge* in the church &
Isles of St. Andrew in Norwich, be made at my
Cost.

1509, 1511, and subsequently, are receipts in the accounts of St. Margaret's Church, Westminster, for rent (*a*), to which we shall presently advert.

1546. All Hallows Staining, London (*b*):—

For mendeng the *puese* & stoff, & for
mendeng the pennakel ovar sent luke ij^s viii^d

(*y*) Extracts by Mr. Peacock, *Archæologia*, Vol. XLI. p. 364.

(*z*) Blomefield's *History of Norfolk*, orig. fol. ed., Vol. II. p. 703.

(*a*) Accounts of Parish of St. Margaret, Westminster, Nichols' *Illustrations*, pp. 4 *et seq.*

(*b*) All Hallows Staining Parish Accounts (unpublished).

1546-52. Bletchingly, Surrey, accounts (*c*):—

		BOOK I. CH. IV.
Payd to Robert Eyton for mendyng of the seattes	xv ^d	Parish Ac- counts.
Payd for nayles to repayre the seattes in the Church, and the Scaffoldys.	iiij ^s iiij ^d	
Item payd to Christofer Kyllycher for j dayes labor	v ^d	
Item payd for certain pollys that was occu- pyed about the scaffold (the gallery)	v ^d	
Item payd to Robert Eton for mendinge of seattes in the church	x ^d	

(The next year he was paid xv^d more for similar work (*d*).)

Item to the Sextone for wasshing seates	iiij ^d
Item for fower sceatts and dooble deskhes for the syngyng men to syt in, and to laie y ^{er} boockes	xx ^s

c. 1548. All Hallows Staining, London (*e*):—

paide for making of certeyne pewes in the Church, and for workemanship and stuf.	xxvj ^s
---	-------------------

1551. Wimbledon, Surrey, parish accounts (*f*):—

Paymentes—Payd to the carpenter for removeng of the pulpett and mending pewes	v ^s viij ^d
---	----------------------------------

(*c*) *Loseley MSS.*; Surrey Archæological Society Collections, Vol. IV. pp. 102—104. Also, in part, in Kempe's *Loseley MSS.*, p. 163.

(*d*) *Ibid.* p. 163.

(*e*) *Inventories of Church Goods*—Record Office.

(*f*) *Loseley MSS.*; Surrey Arch. Soc. Collections, Vol. IV. p. 135.

BOOK I.
CH. IV.Repairs in
sixteenth
century.1551. Rotherithe parish accounts (*g*):—

To the Carpynter.

To Harry Dytlyng of Sowthewarke, car-
pynter, for makynge of new *pewys* &
mendynge of thold, for xxvi dayes at
xij^d by the daye xxvj^s; & for his man
for lyke dayes at viij^d by the daye,
xvijs iiiij^d; & to his man for iij dayes,
for mendynge of a gutter at lyke wages
by the daye ij xlv^s iiiij^d

1552. St. Botolph, Aldgate (*h*):—

Payde for mendinge of the pewyes. xij^d

Barling, Essex, *Church Inventories and Accounts* (*i*):—

Layde out by John Finche and Richard
Rulle for mendynge of the *stools* in the
chirehe xl^s

Pagelsham, Essex (*j*):—

To a carpenter for mendynge of the *seatts*
yn the church vj^s viij^d
Item for nayles viij^d

Shopland, Essex (*k*):—

Lay'd out for tymbre, borde, & nayles,
for the makynge of new *stoles, or seats*,
in the church xvi^s iiiij^d
Item for workmanshpype of the forsayd
stoles or seates xvi^s viij^d

(*g*) *Losceley MSS.*; Surrey Arch. Soc. Collections, Vol. IV. p. 123.(*h*) St. Botolph, Aldgate, Churchwardens' Accounts.(*i*) *Church Inventories and Accounts*, edited by H. W. King, Esq., in
Essex Archaeological Society's Transactions, Vol. IV. p. 216.(*j*) *Ibid.* Vol. IV. p. 232.(*k*) *Ibid.* Vol. V. p. 123.

In fact, the church inventories of this period contain innumerable entries of expenditure for mending pews and making new ones. The Royal Injunctions in 1547 (*l*), which direct the conversion to the use of the poor of all rents of lands, and the profit of cattle, and money given or bequeathed to the finding of torches, lights, tapers and lamps, permit of bestowing part of the profits upon the reparation of the church, if great need require, which, if the actual application of the money is any test, seems to have been very generally the case: however large a sum the sales realized, there was seldom much balance to hand over.

BOOK I.
CH. IV.

Repairs in
sixteenth
century.

It would appear, however, very probable that the churches were still frequently only fitted in part with pews, and that, especially in country places, even so much was not universal till long afterwards. Had they been so fitted, we should expect to find the solidly constructed seats much more generally remaining at the present day; and many incidental circumstances point to the same conclusion. Thus, pews or seats are not mentioned in Cranmer's Visitation Articles, in the second year of King Edward VI. (*m*); nor in those of Ridley, in 1550 (*n*), where he inquires—

Partial fitting,
up to sixteenth
century.

Whether your church be kept in due & lawful reparation, & whether there be a comly pulpit set up in the same; & likewise a coffer for almes for the poor, called the poor man's box or chest.

Nor in those of Queen Elizabeth, in 1559 (*o*):—

Whether churches, pulpits, & other necessities ap-

(*l*) *Injunctions by King Edward VI.*, 1547; Sparrow's *Collection*, p. 10.

(*m*) Sparrow's *Collection*, p. 31.

(*n*) *Ibid.* p. 35.

(*o*) *Ibid.* p. 238.

BOOK I.
CH. IV.

Repairs.

pertaining to the same, be sufficiently repaired;
& if they be not, in whose default the same is.

Had pews been general, they could scarcely have been omitted to be specified.

Walking about
during service
forbidden.

Bishop Bentham, in his Coventry and Lichfield Visitation Articles, in 1565 (*p*), directs—

That you daily call upon the people to come to the church upon the Sabbath days in due time, & there to occupy themselves in devout prayers in the time of Divine Service; & not to walk up & down in the church, nor to jangle, babble, nor talk in service time; but to give diligent attendance unto the priest when he readeth Lessons, Homilies, the Epistles or Gospel, or anything else which tendeth unto edifying.

Partial fitting,
up to sixteenth
century.

This would seem to indicate that the churches were only very partially fitted with seats, or there would not have been much space left for walking up and down.

In 1583 the churchwardens of Fiefield presented to the Archdeacon at his visitation (*q*) (the number of seats being evidently limited):—

That the yought of the parishe dothe take upp the *stoales*, where the parishoners shuld sit, & they lacke roome.

Edinburgh riot
in 1637.

From the account of the riot which took place, 72 years later, at St. Giles, Edinburgh, on the attempt to re-introduce the Church form of prayer, and the surplice, it appears clearly that it was then usual for women, at least,

(*p*) State Papers in Record Office, extracted in *The Church Review*, 8th August, 1868.

(*q*) Archd. Hale's *Proceedings in Diocese of London*, p. 177.

to take moveable seats to church for their own accommodation (*r*).

BOOK I.
CH. IV.

Moveable
seats—Edin-
burgh riot.

On Sunday the 23 of July (1637) was the day appointed for the first reading of the New Liturgy in all the Churches of the Kingdom (Scotland); and how it sped at Edenborough (which was to be exemplary to all the rest) shall be told by another, who hath done it to my hand already.

July 23, being Sunday, the Dean of Edenborough began to read the book in *St. Giles* his church (the Chief of that City), but he had no sooner entred on it than the inferiour multitude began in a tumultuous manner to fill the Church with uprore, whereupon the Bishop of *Edenborough* stept into the Pulpit, and hoping to appease them by minding them of the sanctity of the place, they were the more enraged, throwing at him Cudgels, Stools, and what was in the way of Fury, unto the very endangering of his life.

The same statement is given by other authorities. It was one “Janet Geddes, who, like the wretch that burnt the temple of Ephesus, would never have had her name mentioned, but for some villainous exploit of this kind, struck up the prologue to the subsequent tragedy by heaving her folding stool at the Bishop” (*s*). There are several stools preserved, which each claim to be Janet Geddes’ stool, so applied: one in the Antiquarian Museum at Edinburgh is a kind of camp-stool.

And even in 1640, in an account of a thunderstorm which happened on Whitsunday in that year, it is stated (*t*)

(*r*) Heylin’s *Cyprianus Anglicus*, fol. 1668 (Part II.), p. 348.

(*s*) Skinner’s *Ecclesiastical History of Scotland*, Vol. II. p. 307.

(*t*) Scarce tract called *The Voice of the Lord in the Temple*, quoted in the *History of Poes*, p. 10.

BOOK I.
CH. IV.

Moveable
seats.

that two women sitting in the chancel of St. Anthony's Church, near Plymouth, in one pew, were overturned: of course this could not have happened if the pew had at all resembled the fixed structures to which we now apply the name.

In 1641, Ephraim Udall, Rector of St. Austin's, London, refers (*u*) to the arrangement,—

As it is now practised in many Churches, where the Pews in the Church are so ordered that any of them, & all of them successively, are taken up, & the ground used " (for burials).

In one compartment of the frontispiece to the edition published in 1596 of Fox's *Acts and Monuments*, is a representation of the interior of a church in which a Puritan minister is preaching, and the congregation are sitting on what look like low boxes, and grouped around the pulpit. The edition of 1631 has to both volumes the same frontispiece as the edition of 1596: it also contains a view of the church of St. George, Ipswich, similarly arranged (*x*).

(*u*) *Communion Comelinesse*, by Rev. Ephraim Udall, p. 2.

(*x*) Fox's *Acts and Monuments*, fol. ed. of 1596: and ed. 1631, in two fol. vols., frontispieces and p. 292.

CHAPTER V.

OCCUPATION OF SEATS.



BOOK I.
CH. V.

WE now come to the more important question as to the occupation of these seats, the gradual introduction of which we have partially traced.

From a very early period the Church, bearing in mind the apostolic precept to give honour to kings and rulers (*a*), accorded them places of distinction. In the fourth century St. Ambrose rebuked the Emperor Theodosius for taking his seat within the rails of the sanctuary, though it had been customary for Emperors to do so: after which Theodosius, and his successors, always took their place without the rails. The Emperor's place was then the upper seat next to the chancel, and the Empress had her seat at the upper end of the women's part (*b*). This is the great Precedent, or "Leading Case."

The Emperor, as it appears from the same authority, entered the chancel to make his offering, and then returned to his place.

This prohibition of laity remaining within the chancel is Nor laity.

(*a*) *First Epistle of St. Peter*, cap. ii. vv. 13—17.

(*b*) Bingham's *Christian Antiquities*, explaining the *Solea*; 8vo. ed., 1840, Vol. II. p. 419. Theodosius was converted A.D. 380, and died in 395.

BOOK I.
CH. V.

Laity not
permitted in
chancel.

further shown by the Trullan Council, A.D. 683 or 692
(now received only by the Eastern Church) (c):—

69. Nulli omnium liceat, qui quidem sit in laicorum numero, intra septa sacri altaris ingredi, nequaquam tamen ab eo prohibita potestate & auctoritate imperiali, quandoquidem voluerit Creatori dona offerre, ex antiquissima traditione.

Upon this is the Gloss (d):—

Nulli liceat laico intra sacram altare, &c. Adulatione et timore victi, per gravem errorem concedunt imperatori, quod magna cum laude sanctorum patrum Ambrosius Theodosio negavit.

In some rather more modern churches there was also a place called the Senatorium, but it is not clear whether this was occupied by the magistrates or senators, or by the Bishop and Presbyters who were the senate of the church (e).

But customary
for nobles in
seventeenth
century.

Frances (*de Cathedralibus*), quoting various authorities, says (f), that it is not permissible for laymen to sit or stand in the choir when the Divine Office is being celebrated, except for the purpose of making their offering, or receiving the most Holy Eucharist; and so the *Ceremoniale*, re-edited by Pope Clement VIII., says that seats for nobles and illustrious laymen, magistrates, and chiefs, to whose dignity and position seats are fitting, should be

(c) *Canones Trullani, sive quinissectæ synodi, seu Conciliabulum Constantinopolitani, Sacrorum Concilia*; ed. Coleti, fol. Florence, 1765, Vol. II. p. 974: also, *Concil. Collectio regia maxima*; Paris, fol. 1644, Vol. XVI. p. 647.

(d) *Concil. Collectio regia maxima*, Vol. XII. p. 50, note t.

(e) Bingham, *ut supra*.

(f) Frances, *De Cathedralibus*, cap. v. ss. 42—6 (p. 78).

placed outside the choir and presbytery, according to ancient canons, as was observed from an early period of the Christian religion.

BOOK I.
CH. V.

Whether
nobles may be
permitted?

Thus, though laymen had no right to seats, it was permitted *ex gratiâ* (*g*). But this rule was so little observed at the date of the work (1665), that *Principes, Laici, et eorum Legati, stent mixti cum Clericis in Cappella S. D. N. Papæ*. And such practice prevailed in other churches, as in the case of the Governor of Milan, the Duke of Genoa, and the Chief of the State of Lucca. And it is to be noted (showing that the practice was acknowledged and regulated), that the seat of the Bishop is placed *ad cornu Evangelii*, and those of the magistrates *in cornu Epistolæ*; but the former is raised two steps higher than are the latter, according to the statement of Cardinal Bellarmine, in 1619.

Notwithstanding, says Frances (*h*), arises the question, *An autem hæc prohibitio sedendi in sacro Presbyterio extendatur ad Imperatores, Reges vel alios Principes superiorum, non agnoscentes? dubium est inter Doctores*. In support of the proposition it is urged that the Emperorship is equal to the dignity of a subdeacon; but the contrary is considered by our author as the truer opinion.

The practice, however, of according prominent places in the chancel or choir to princes and persons of high distinction was followed in Great Britain, and records are not wanting to prove that it was done under high authority. By an Episcopal Order in Scotland in 1225 (*i*), the King

Permitted in
England.

(*g*) Frances, *De Cathedralibus*, ss. 60—7 (p. 79).

(*h*) Ibid. ss. 68 *et seq.* (p. 79).

(*i*) *Concilium Provinciale Scoticanum*; Wilkins' *Concilia*, Vol. I. p. 618.

BOOK I.
CH. V.

and great persons were admitted, though all others were excluded.

Only noble
laity per-
mitted.

80. Ne laici secus altare, quum sacra mysteria celebrantur, stare vel sedere, inter clericos presumant, excepto domino rege & majoribus regni, quibus propter suam excellentiam in hac parte duximus referendum.

Also the
Patron.

In 1240, the Diocese of Worcester, under Bishop Cantilupe (*k*), agreed to this canon:—

Nec laici stent in Cancellis, dum celebrantur divina ;
salvâ tamen reverentiâ patronorum & sublimium personarum.

And a similar canon was passed in the Diocese of Durham, under Walter de Kirkham, in 1255 (*l*):—

Provideant autem Rectores, Vicarii, & Sacerdotes,
ne passim laici sedeant & stent in Cancellis, dum divina officia celebrantur, nisi forsân Patroni aut alia venerabilis persona, ad hoc, ob reverentiam, admittatur.

And so in the *Constitutions* of Robert, Bishop of Lincoln (*m*):—

Ad hæc adjicimus ne Laici stent vel sedeant inter Clericos in Cancellis dum divina ibidem celebrantur, nisi forte ob reverentiam vel aliam rationabilem causam & manifestam. Hoc solum Patronus permittitur.

(*k*) Spelman, p. 241 ; Wilkins, Vol. I. p. 666.

(*l*) Spelman, p. 299 ; Wilkins, Vol. II. p. 707.

(*m*) Kennet, *Parochial Antiquities of Ambrosdem*; glossary, *s. v.* Patronus. It is evidently Robert Grosstête, who was Bishop of Lincoln from 1235 to 1254.

And at the Synod of Exeter, in 1287, under Bishop Peter Quivil (*u*):—

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CH. V.

Statuimus quod nullus de cætero, quasi proprium sedile in ecclesiâ valeat vendicare, nobilibus personis, et ecclesiarum patronis duntaxat exceptis.

Nobles and the Patron permitted.

And the following will suffice for later examples of the practice which prevailed in England:—

1374. From the will of Alan de Alnewyk, of York, Goldsmith (*o*):—

Some others tolerated.

Do . . . corpus meum ad sepeliendum in choro ecclesiæ Sancti Michaelis de Berefrido, juxta locum *ubi sedere solebam* in eodem choro; vel infra ecclesiam Hospitalem Sancti Leonardi Ebor', secundum dispositionem executorum meorum infrascriptorum.

1454. In the will of Robert Constable, of Bossall, Esquire (*p*):—

First I devyse my saule to God Almyghty, and his modir Blyssid Sant Marie, & to Sant Botulphe, & to the holy courte of hevyn; & my body to be bered in y^e quere afore y^e place *where my seth is*, opon y^e north party of my parish kirk of Bossall, afore y^e hy alter.

Although the wording is not very clear, it appears to relate to a seat in the quire.

1456. Sir Alexander Nevile, Knight (*q*), by his will directs:—

My body to be berid in Saynt Mare kirke, the Old

(*u*) Spelman's *Concilia*, p. 364; Wilkins' *Concilia*, Vol. II. p. 140.

(*o*) *Testamenta Eboracensia* (Surtees Society), Vol. IV. p. 91.

(*p*) Ibid. Vol. II. p. 175.

(*q*) Ibid. Vol. II. p. 207.

BOOK I.
CH. V.

Laity seated
in chancel.

(at York), att Saynt Nicholas auter, before the stall quer (where) I sitt at Mese.

1468. In a suit by Lady Wyche (*r*) against the parson of a church for removing a coat-armour and certain penons and arms of her late husband, which had been hung up in the chapel where he was buried, Yelverton, her counsel, in his argument, put a case thus (showing the custom was not uncommon):—

Jeo aye un lieu de seer en le chauncel, & la jay mon carpet, & lyver, & quishen; doit le parson aver ceux pur ceo q̄ ils sont en le chauncel; ie die que non.

1511. In the will of Robert Fabyan (*s*) (the Chronicler), Citizen and Draper of London:—

If it happen me to decesse at my mansion called halfstedys, then I will that my corps be buried atweene my pewe and the highe awter, w^t in the qwere of the pisshe church of Alhaloweñ of Theydoñ gardoñ, in the shyre of Essex.

Lord Chan-
cellor Sir
Thomas More.

Sir Thomas More:—

And whereas uppon the holie daies, duringe his high Chancellorship, one of his gentlemen, when service at the Church was donne, ordinarilie vsed to come to my Ladie his wives *pue* dore, & saie unto her, *Madame, my Lord is gone*; the next holidiaie after the surrender of his office, & departuer of his gentlemen from him, he came unto my Ladie his wife's pewe himselfe, & makinge a lowe courtesie, said unto her, *Madam, my Lord is gone*. But she, thinking this at first to be but one of his

(*r*) *Year Book*, 9 Edward IV., ed. 1597, p. 14.

(*s*) Prerogative Registry, 11, *Fetiplace*.

Jests, was little moved, till he told her sadly he
had given up the Great Seale (*t*). BOOK I.
CH. V.

At St. Botolph, Aldgate, the pew of Sir Arthur Laity in
chancel.
D'Arey in the quire is mentioned in the accounts for the
two years 1553 and 1554 (*u*):—

Paide to Mattram, Carpenter, for three
Elme bordes for the two newe pwes in
the Quayre whereas S^r Arthure Darsey
and his Wife are sett ij^s viij^d

But the reign of Queen Mary then commenced and the
chancels were cleared and restored to strictly ecclesiastical
purposes (*u*):—

Paide to the same Jeames (Braddytte) for
making and setting uppe the pwes in the
Quyre whereas the preests and Clarekes
doo sytt to singe; for foure dayes worke iij^s iv^d
Ifm paide the vith day of may to the said
Jeames for making of the pewes in the
Chauncell on the north side for vj daies
work at xij^d the daye vj^s

And subsequently even Sir Arthur was apparently turned Turned out in
Queen Mary's
time.
out (*u*):—

1556. Payd to the same Joyne^r for making
of a pwe for S^r Harter Darssey
and for the stuf belonging unto the
same pwe xxxij^s iij^d
Payd for A matt and too haßsoks for
S^r Harters Darses pwes xx^d

Possibly the chancel arrangements may have been altered

(*t*) Rooper's *Life of More* (ed. 1729), p. 68. The same anecdote is
given in *Witty Apophthegms by King James and others*, 1658; Sir Thomas
More, No. 28, p. 166.

(*u*) St. Botolph, Aldgate, Churchwardens' Accounts.

BOOK I.
CH. V.

Women forbidden in
chancel.

in the subsequent reign, when in 1587 the parish gave leave to Master Dove to build a pew for himself and another for his wife to sit in, being in the chancel (*v*).

Though laity were now frequently admitted into the chancel, the permission was generally restricted to men. For example, we find that in a faculty for seats in Great Burstead Church, Essex, in 1611 (*x*), the applicant was authorized to build one pew at the entrance of the chancel for the use of himself and sons, and companions and friends of the male sex; and another pew in the body of the church for the use of his wife and her daughters, and companions and friends of the female sex.

Thus much was authorized or permitted; and, in fact, it would appear that the laity from a very early period were not content with their own part of the church, but invaded the part specially appropriated to the performance of the Divine Offices: and the women, though ecclesiastically the most obnoxious as intruders upon the chancel, were the most pertinacious.

In the fourth century (A.D. 367), the Council of Laodicea passed a canon, that women ought not to come near the altar (*y*) (or enter into the apartment where the altar stands) (*z*).

There was a canon passed at Mantes in the ninth century (*a*):—

Ut nulla fœmina ad altare præsumat accedere, aut
presbytero ministrare, aut infra cancello stare.

(*v*) St. Botolph, Aldgate, Churchwardens' Accounts.

(*x*) London Registry, *Vicar-General's Books*, Vol. II. fol. xxxiii.

(*y*) Dupin's *Ecclesiastical History*; fol. translation, London, 1699, Vol. II. p. 269.

(*z*) Johnson's *Clergyman's Vade-mecum*, p. 116.

(*a*) Dupin's *Ecclesiastical History*, Vol. VII. p. 138.

or in the French (*b*):—

Il defend aussi aux femmes de s'approcher de l'Autel,
d'y servir le Pretre, ou d'être assises dans le
Balustre.

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CH. V.

Women for-
bidden in the
chancel.

And in England, in the “Canones dati sub Edgare Rege” (*c*), in the time of St. Dunstan, A.D. 967, is the following:—

44. Docemus etiam, ut altari mulier non appropin-
quet dum Missa celebratur.

Also in a body of Anglo-Saxon Canons of uncertain time and place, but in the latter half of the tenth century, is as follows (*d*):—

Women
wrongfully
permitted in
chancel.

6. Fœminæ, Missam Sacerdote celebrante, nequaquam ad altare accedant; sed locis suis stent: et ibi sacerdos earum oblationes Deo oblaturas accipiat: memores enim esse debent fœminæ infirmitatis suæ, et sexus imbecillitatis, et idcirco sancta quælibet in ministerio ecclesiæ contingere pertimescant: quia et jam Laici viri pertinere debent, ne Uzzæ pœnam subeant; qui dum arcam Domini extra ordinationem contingere voluit, Domino percutiente interiit.

In a work entitled *Handlyng Synne* (*e*), written in English by Roberd de Brunne in the year 1303, but translated from an earlier work in French, entitled *Manuel des Peches*, he heartily inveighs against the laity, and

(*b*) Dupin's *Ecclesiastical History*, 8vo. ed., Paris, 1697, Vol. XII. p. 462.

(*c*) Spelman's *Concilia*, p. 453.

(*d*) Ibid. p. 589; Wilkins' *Concilia* (a different translation from the Saxon), Vol. I. p. 267.

(*e*) *Handlyng Synne*, edited by Frederick J. Furnivall, Esq., M.A.

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CH. V.

Women wrong-
fully permitted
in the chancel.

especially women, being admitted into the choir. In parallel columns are the lines of Roberd de Brunne and the earlier French :—

þe lewede man holy cherche wyl forbede
To stoundeyn þe chaunsel whyl men rede;
Who so ever þarto ys custummer,
þoghe he be of grete powere,
Bothe he synneþ and doþe grenance
Aȝens þe elergy ordynaunce.

But ȝyt do *nymmen gretter folye*
þat use to *stonde among þe elergye*,

Oþer at matyns, ore at messe,
But ȝyf hyt were yn cas of stresse,—
For þerof may come temptacyun
And dysturblyng of devocyun;
For foule þoghte cump of feble ye syȝt,
And fordopþe grace wyþ ryȝt.

Lines 8805 to 8818.

For *nommens* sake þys tale y tolde,
þat þey *oute of the chaunsel* holde
Wyþ here kercheves, þe devylys sayle,
Elles shall þey go to helle boþe top and
tayle;

For at hym þey lerne alle
To temptþe men yn synne to falle.
To synne þey calle men, alle þat þey may,
Why shulde þey ellës make hem so gay?
For no þyng elles are þey so dyȝt
But for to blyndþe mennës syȝt.
Certes hyt semeþ at all endes
þat many of hem are but fendes.

Lines 8883 to 8894.

Lay ne deit demorer
Ovek les clers en le qeor,
De custume, fet a saver;
Meuz li vaudreit hors ester.

Femme est plus a blamer
Qe esta par custume en queor,
Tant cum lem fet nomement
Le servise deu et le sacrement,
Car les clers purreit tempter
E desturber le chanter;
Par fol regarder
Vinent fole pensez en qeor.

Lines 6743 to 6754.

Pur ceo, femme en chancel
Entre clers ne dust ester,

De mal qe en pout avenir;
Car de fol regard vent fol desir.

Lines 6808 to 6811.

Objected to
till late.

The practice of lay men and women occupying places in the choir might be expected to cease when seats in the body of the church became common, and when, in fact, the nave became regularly fitted with benches, but such appears by no means to have been the case, as may be shown by examples to the contrary, at a considerably later date.

Durham Cathedral, 1633 (*f*). On the visit of King Charles, His Majesty proceeds to command that certain seats heretofore occupied by the Mayor and Corporation, the wives of the Dean and Prebendaries, and “other women of quality,” which had been ejected from the choir in contemplation of the royal visit, should never be again erected, “that soe the Quire may ever remaine in its auntient beawtie.” Minute directions are given as to the provision which was to be made for the future accommodation of the Mayor and Corporation, and the wives of the higher dignitaries. The “other women of quality” are to be seated upon moveable benches or chairs, which can be stowed away in the vestry, or elsewhere, when “not wanted.”

BOOK I.
CH. V.

Women objected to in chancels.

Laud—In an “Annual Account of his Province,” delivered to the King (*g*), says:—

Archbishop
Laud.

The Cathedral at Salisbury is much pestered with seats and I have given order to remove them, which I hope your Majesty will approve, as well as you did in York and Durham; and add your power if mine be not sufficient.

The King writes in the margin:

K. Charles I.

C. R. I doe, and will express my pleasure (if need be) what way you will.

And so in a letter of the Bishop of Rochester in 1625 (*h*), wherein he says:—

For myne owne p̃ticular opinion, I doe not thincke
* * * that Women should be allowed to sitt in
the Chancell, which was instituted for Clarkes.

(*f*) *Correspondence of Bishop Cosin*, Surtees Society; Introd. by Rev. George Ormsby, p. xxix.

(*g*) *Ibid.* in foot note.

(*h*) In Rochester Diocesan Registry: see *Archæologia*, Vol. XII. p. 103.

CHAPTER VI.

EARLIEST APPROPRIATIONS.

BOOK I.
CH. VI.

Early appro-
priations.

Exeter Synod
in 1287.

WE have not discovered or heard of anything suggesting an appropriation of church seats (other than those in the choir, usually for the clergy), or anything contrary to the natural presumption arising from the Common-law right of parishioners to the use of the church in common (and it is believed that the word “church,” in such matters, technically meant the body of the church, as distinguished from the chancel) before the fifteenth century, with one exception, which is as curious as it is unique. We refer to the decrees of the Synod of Exeter, held under Bishop Quivil, and terminated on the (16th calend of May) 16th April, 1287. In cap. XII. *De ecclesiarum ornamentis, et eodem custodia (a)*, after reciting unseemly contentions between the clergy and parishioners, it proceeds:—

Item audivimus, quod propter sedilia in ecclesia rixantur multoties parochiani, duobus vel pluribus unum sedile vendicantibus; propter quod grave scandalum in ecclesia generatur, et divinum sapius impeditur officium; statuimus, quod nullus de cætero quasi proprium sedile in ecclesia valeat vendicare, nobiles personis et ecclesiarum patronis duntaxat exceptis; si qui orandi causa primo eccle-

(a) Wilkins' *Concilia*, Vol. II. p. 140; Spelman, p. 364.

siam introierit, juxta propriæ voluntatis arbitrium
sibi eligat orandi locum.

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CH. VI.

Exeter Synod.

Now, from this single passage, it cannot for a moment be contended, in opposition to every other and exceedingly strong presumption to the contrary, that at that date churches were regularly fitted with public benches for the use of the parishioners, and so usually as to necessitate the making of a formal decree by the synod to prevent usurpation. The only reasonable way of accounting for the decree is, by the supposition that the seats to which he refers were the seats in the chancel or quire; it would seem so from the mention of noble persons, and the patron of the church, the latter of whom had an unquestioned right to a seat in the chancel.

In fact, we find no ground for supposing that any individual appropriation of places in the body of the church existed either legally or illegally, until a very much later date.

Of a definite appropriation, the earliest instance (if any reliance can be placed upon its date) is that at Assheton-under-Lyne. It is contained in a volume of the customs and rental of the manor, purporting to bear date or to commence in the first year of King Henry VI. (1422 (*b*)). An archæologist naturally looks to the evidence of date; but finds it here, as printed, very inconclusive. The book appears as a quarto volume, published, in 1822, by Dr. Hibbert (or Hibbert-Ware), under the title of *Illustrations of the Customs of a Manor*. Dr. Hibbert states that it is a transcript from the original manuscript, which

Ashton-under-Lyne.

(*b*) *Illustrations of the Customs of a Manor*, by Samuel Hibbert, 2nd Appendix, p. 17.

BOOK I.
CH. VI.

Ashton-under-
Lyne.

was formerly in his hands, but which he afterwards presented to the lord of the manor; and that, to his regret, he found the transcriber had modernized words and spelling. One would have expected that, as editor, he would have collated his copy with the original when he thought of publishing. There is, therefore, no means of applying the test of orthography, which has been found so important in testing the authenticity of archæological documents,—and especially so considering the advance that the study has made since 1822; and, indeed, without knowing what qualifications the editor might have possessed for a critical examination of the document, one cannot but feel that the evidence of date is (to make the most of it) very inconclusive.

The document relates to an arrangement of persons in their seats in the church,—beginning with seven *forms* (a word which appears never to have been used for a seat without a back, nor for a fixed seat), on the north side, the first of which is to be occupied as follows:—

Uxor Thomæ de Claydon—Uxor Radⁱ. de Berdysley
—Uxor de Sunderland—Uxor Radulphi de Wood,
and their servants and other Gentils strangers.

On the same side are six other forms, at the nether end of the kirk, also fully allotted.

On the south side, of the first seven forms, three are allotted to wives by name; then the tenants of certain persons named; next *Tenants Wynches* of Sir John the Byron, that dwellyn with him; then the parson's tenants; and next five wives and a daughter (tenants of Woodhouse), and the strangers. Nothing is said about the

other half of this side, except “the other void forms for servants and strangers.”

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CH. VI.

As far as we can judge from the work, it would appear that the allotments were to women only, and that, contrary to the ancient practice, the women were placed on both sides of the church. There are no seats allotted to men.

Ashton-under-Lyne.

The following extract relates to the church of St. Mary Woolchurch Haw, London :—

St. Mary
Woolchurch
Haw.

Thys ys the cōpye of the ordynance in the boke of our Ladye of Woolchyrche have . . . for the good rule of the same pysshe, made by all the bodye of the same pysshe w^t the consent of Syr John Benet then pson, William Pyne, Brewer, at the Wyghte cocke, made the 2 day of Jan. the yere of our Lord God 1457. . . . Also the sayd chyrche wardens shall by the autoryte of the Mayre of London, grauntyd in the Gylde Hall, that we shall set bothe ryche and pore yn the sayd chyrche in her pews y^t longythe ; and in case they will not be rulyd by the sayd wardens for the tyme being, they to ronne in payne that ys ordeyned in the Gylde Hall.

This paragraph is printed in the Addenda to the third edition of the *History of Pwes*. The writer of that work was by no means remarkable for his exactitude in his extracts, nor for reference to original authorities, nor, indeed, for any great care in his references at all. No authority is given for the above extract, so that one would presume it to have been made from the original document. His third edition was published in 1843, and the Addenda consisted of illustrations of the subject discovered or received too late to be inserted in their proper places. Since

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CH. VI.

St. Mary
Woolchurch
Haw.

that date there have been changes in both vestry clerk and parish clerk of St. Mary Woolchurch, and among the many ancient volumes of records belonging to the parish none can be found bearing the name of the *Boke of our Ladye of Woolchyrche Hawe*, nor any of nearly so early a date or containing any such ordinance. A search of the original records in Guildhall (*c*) fails to discover any such order as that referred to; but some of the volumes have suffered so severely from damp in former days (though now very carefully laid down and preserved) that they are scarcely legible, and there is just a possibility that the order may have in consequence been overlooked, notwithstanding a careful search.

Sir John Benet was parson of St. Mary Woolchurch Haw in 1457 (*d*), but the form of expression, "then parson," rather suggests that the entry was made at a subsequent date.

If such an order were made by the mayor in Guildhall, it would almost certainly have been general throughout the city parishes, and in that case one might expect that the ancient records of some other parishes would refer to the same thing; but no such notice has yet come to light.

The orthography of the paragraph furnishes in fact almost the only argument in favour of its genuineness; but, standing unsupported, there seems at least an equal probability that the whole may have been a practical joke,

(*c*) *Journals, Letter-books, &c.*, searched by permission of the Guildhall Library Committee.

(*d*) Newcourt's *Repertorium*, Vol. I. p. 460.

played off with little risk of detection upon the known enthusiasm and carelessness of research of the author of the *History of Pews*, in whose work alone, so far as we can discover, has it been printed.

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CH. VI.

St. Mary
Woolchurch
Haw.

In another instance in which he refers to the records of a London parish, the books cannot now be found.

The seats at St. Michael's, Cornhill, mentioned in Cornhill. 1467 (*e*), were for men and women separately, and Mayster Stokker and Lady Stokker had each a separate pew.

Next is the well-known case of St. Margaret's Church, Westminster. Westminster (*f*). Although the churchwardens' accounts begin in 1460, and contain numerous entries every year, there is no mention of pews until 1504, and the following are the only, and isolated, examples during a long period of years:—

1504. Received of the Lady Sottell in part of payment for her part of a pew	4 ^d
1509. Item of Sir Hugh Vaughan Knight for his part of a pew	6 ^s 8 ^d
1511. Item received of Knight the Courtyer, for his wive's pewe	2 ^s
1516. Item received of the Virger of St. Stephyns, for part of a pew for his wife	3 ^s 3 ^d

It will be observed that they are all for persons of position (the Virger of St. Stephen's probably was such); and that the third and probably the fourth instances are for women; and they are only parts of pews. In fact it

(*e*) *St. Michael, Cornhill, Accounts*, p. 35.

(*f*) *Nichols' Illustrations*, pp. 4 to 7.

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CH. VI.

Westminster.

would appear from subsequent entries that pews were not common there for a long time after:—

- 1538 (*g*). Paid for matts (*h*) for the
parishioners to kneel upon
when they revered their
maker, price 4^s 4^d
- 1609 (*i*). Sum of the whole charges dis-
bursed & laid out about the
old & new pews in the church £78 15 0
- 1633 (*k*). To Adam Brown for making &
setting upp of two & twenty
new pewes on the South side
of the church according to
an agreement made with him
in that behalf, as by his bills
appears £24 16 0

Such heavy expenditures, especially taking into account the comparative value of money at that date, must have been for the erection of a very large number of pews; and as the practice was, as we have said, always to make the benches massive and substantial, there is every reason to suppose that there could have been but few previously existing and that now the church generally was benched.

Hackney.

This and the case of Hackney, in 1598 (*l*), are the only

(*g*) Nichols' *Illustrations*, p. 10.

(*h*) These mats were probably of wicker, like those of St. Mary-at-Hill (Nichols' *Illustrations*, p. 94):—

1477—9. (Paid) ffor 3 mattis of wicker bought for prestis and
clarkis 4^d.

And at St. Margaret, Westminster (Ibid. p. 9):—

1529. Paid for a matt of wyckers for the quere 3^s.

(*i*) Nichols' *Illustrations*, p. 28.

(*k*) Ibid. p. 41.

(*l*) London Registry, *Vicar-General's Books*, Vol. VIII. fol. xcii.

instances which have been adduced in support of the theory that pew-rents were in use in this country at any early period; and though, of course, it is possible another example or two may be discovered, it is clearly insufficient to support a legalization of rents by custom.

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CH. VI.

It may be further remarked, that the metropolis was a kind of *imperium in imperio*, and the encroachments of the laity upon the Church are distinctly visible in more than one point. Thus, from long usage, the inhabitants of London parishes prescribe for the right of appointing both churchwardens, and they have the privilege and duty of repairing the chancel as well as the nave. They also claim the right of allotment of seats independent of the bishop, but fail to produce any legal decision in their favour upon this point, which is distinctly contrary to the principle which governs other cases. And as a rule is said to be proved by an exception, so a few such examples as those referred to (if others be discovered) would serve, by their contrast to the absence of such a practice elsewhere, to mark them as being the exceptions.

Custom of
London.

But if there remained any doubt as to the ancient law upon the subject, it would be cleared up by a legal decision in the year 1493 (*m*), where an action for trespass for having broken and carried away the seat of the plaintiff, one William Fitzwalter, the judges held—

Appropriation
contrary to
ancient law.

Si ne soit per prescription, tel sedule ne purĩ este en esglise come semble, car l'esglise est en commun pur chescun, donques n'est reason que un home ait son sedule & q̃ deux estoierent, car nul lieu est plus à l'un que à l'autr. Mes semble q̃ lordinaĩr

(*m*) *Year Book*, 8th Henry VII., ed. 1597, p. 12.

BOOK I.
CH. VI.

Appropriation
illegal.

voill' order gentilmen lieux convenient pur eux,
& pur les poures auts cōvenient places.

Mes sʒ ẽ spūel chose & issint sil & ses aunç nont us
dast tiel sedule là, de temps de prescription, semble
q̃ chescun home purĩ prender le sedule q̃ẽ ẽ del
esglise, & ceo remove pur son ease & standing; car
cest al cōmen nusans de eux, car ils ne purĩ aũ
lour standing pur tielx sedules, s. setes en el esglise,
per que il ẽ bon destĩ advise de cest matter, car
cest novel matter, & bon destĩ advise en example
de tous auters.

That is to say—

If one does not hold such a seat by prescription (and
this was referring to rights as connected with a
chapel or aisle, since the necessary time to acquire
a prescription could not have elapsed in respect to
other seats which were then modern), the claim to
a seat in the church cannot be good, for the church
is common to all, and it is unreasonable that one
man should have a seat in the place where two men
were, for no place is for one more than another.
The Ordinary may order convenient places for
gentlemen (probably the two or three squires in the
parish), and for the poor other convenient places.
If not so held by prescription any man (meaning
parishioner) may remove the seat for his own ease
and standing; for it is a common nuisance to them
that they cannot have their standing by reason of
such seats, that is to say, seats in the church.

This was a clear expression of the opinion of the court
in the fifteenth century, when the question was a novel
one; though, so far, not a judgment, because the court
dismissed the case on the ground that (no prescription
being set up,) it was a spiritual matter with which the
court could not interfere.

At Whalley, Lancashire (*n*), is a pew bearing this inscription :—

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CH. VI.

Factum est per Rogerum Nowell, Ann. MCCCCXXXIII. Pews at
Whalley.

Roger Nowell was lord of the manor of Rede in this parish (*o*).

The history of it is this, as appears from the deposition of an old parish clerk, given in a suit in 1605. A pew belonging to the Towneley family in right of their manor of Hapton, was anciently called St. Anton's Kage; and a dispute having arisen in respect to places in the church, Sir John Towneley, as the principal man in the parish, was called upon to decide it; and afterwards it was remembered that he had made use of the following remarkable words:—"My man Shuttleworth, of Hacking, made this form, and here will I sit when I come; and my cousin Nowell may make one behind me, if he please; and my sonne Sherburne shall make one on the other side, and Mr. Catterall another behind him; and for the residue the use shall be—First come, first speed: and that will make the proud wives of Whalley rise betimes to come to church." These words were remembered by an old clerk, and were reported to another witness on the information of Mr. John Crombeck of Clerk Hill, who had been the last agent to the abbey. The value of the evidence comes to this—B. remembered that A. had made a certain remark; and C. deposed that D. had told him that A. had said something to the same effect. But let us consider what would be the effect of the statement, supposing that it had been proved by anything like evidence legally admissible.

(*n*) Whitaker's *History of Whalley*, pp. 248–9.

(*o*) Burke's *Landed Gentry*, (Vol. II.) p. 1000.

BOOK I.
CH. VI.Pews at
Whalley.

It would seem nothing more nor less than that a local Triton, whose potentiality was invoked to settle the disputes amongst the minnows, says to this effect: I have had this seat built and intend to occupy it when convenient; my cousin and son and another may take the next best, and as to the rest of the seats they are for the women of the parish, first come first served. It is simply the sovereign order of the local autocrat for which no authority but his *ipse dixit* is pretended.

The order manifestly shows that up to the date of his decree there were no appropriated seats except one which he had built for himself.

Ludlow.

Ludlow furnishes a very curious, and probably quite unique arrangement, as appears by the *Churchwardens' Accounts* (beginning in 1540), recently published under the editorship of Mr. Wright (*p*). The churchwardens, acting under the immediate authority, as generally stated, and always with the consent, of the bailiffs of the town, in consideration of a moderate payment made grants of sites which they called pew-places, or pew-room, whereon the grantees built pews, which Mr. Wright says (*q*) they could sell or leave by will, or that the heirs would inherit. The accounts do not show so much as this, but they afford abundant examples of a system of grant by the wardens of pews or half-pews, or the reversion to pews (indicating that the possessors only held them at the utmost on a life tenure), as soon as the same should be due by the "abccenssye, forfeiture, or surrender" thereof; and also of

(*p*) *Churchwardens' Accounts of Ludlow*, Camden Society, Vol CII.

(*q*) *Ibid.* pref. v.

exchanges by the grantees with the consent of the wardens, always under the authority of the bailiffs: and upon each change of occupant there was a form of surrender to the parish and payment of fee by the new grantee somewhat analogous to certain copyhold arrangements. Mr. Wright says that this method of dealing with the pews continued in practice down to a very recent period.

He considers(*r*) that the history of the church may afford some explanation of the case. The church was built by a very early and important guild, to which a large part of the town itself seems to have belonged. In the time of King Edward VI. the guild was dissolved; but the surrender was on condition of its property being re-invested in a new corporation, and it was accordingly transferred to the municipal corporation of the town, and a new charter granted including it, and that thence the fabric of the church became really the property of the corporation. If so, perhaps, it would still be unique.

The following are examples of the entries respecting these arrangements:—

1540(*s*). *Die Lunæ, videlicet xvj^o die mensis Februarii anno regni regis Henrici octavi xxxj^o, coram Johanne Taylor et Johanne Lokyer ballivis domini regis villæ de Ludlow.*

At whiche day it ys orderede and agreede be the seid baylifes that the forseid Richarde Langforde ffrom hensfourth shalle pesably have, occupie, and enjoye, the pewe or sette in the church late in the tenure of Alic Lane deceased, ffor whiche pewe the seide baylifes have awardedede that the seid Richarde

(*r*) *Church of the People*, 1870, p. 135.

(*s*) *Churchwardens' Accounts*, Camden Society, Vol. CII. p. 6.

BOOK I.
CH. VI.

Ludlow sales.

Langforde shalle content and paye to the church wardeyns, the some of vj^s viij^d sterlinge, whiche ys payde the seide day & yere, &c.

It appears that *the forseid* Richarde Langforde was one of the churchwardens for that year.

1555-6 (*t*). For the which some of v^s viij^d m^r Baylifes hathe graunted the sayd churchwardens a pewe at the nether yende of the churche, one the right hand the wedynge dore, late in the tenure of m^{res} Hudson, payinge unto the new churche wardens over the same some of v^s viij^d iij^s

1556-7 (*u*). Item, for as moche as m^r. Mason hathe bowght of m^r. Cother the interest of his pew over agaynst the pulpit, we have sett to the sayd m^r. Mason the sayd pew, in satisfaccion whereof the sayd m^r. Mason hath surrenderyd unto the paryshe hys interest in the pew with Thomas Beadō.

1556-7 (*x*). Memorandum, that we Richard Pooton & Richard Tomlyns, churchwardens, have graunted, withe the consent of m^r. bailifes, the seid yere, the pewis under written unto the persons subscribed, for the somes of money upon their names apperinge.

A similar allotment entered in the books for the same year of three pews to one person was annulled, as appears

(*t*) *Churchwardens' Accounts*, Camden Society, Vol. CII p. 66.

(*u*) *Ibid.* p. 74.

(*x*) *Ibid.* p. 84.

by the marginal memorandum, “denyed upon consideration.”

BOOK I.
CH. VI.

Ludlow
exchanges.

1569 (*y*). Item a pew graunted by m^r. bayliffes to Cutwallater ap Edward, Auncell Clee, Ales Norton, Margaret Norton, and Margery Norton, and to every of them, which pew was one Katherin Norton deceassed, with one yered of grownd more enlarged. Receaved ffor the same iijs iiij^d

1569–70 (*z*). One pewe graunted to m^r. Edmunde Walter by the bailiffes, belonging heretofore to Robert Mullynour lately decessed, being on the middle rowe of pewes on the southe syde by the pyller downeward, next unto the clocke v^s

Item the seid m^r. Walter did exchange the seid pewe with Anne Mullynour for another pewe lyenge foure pewes upward on that rowe, by assent of the bailiffes (nothing paid)

Item the seid m^r. Walter did exchange the seid pewe had of Anne Mullynour with William Partrich & William Bowdlour by thassentes of the said bailiffes .

Item graunted unto William Glover, one pewe, being in the middle rowe where the pulpit standeth, being the lowest pewe of the rowe, by thassent of Anne Mullinour, widowe xij^d

And at length they seemed to have discovered some inconvenience from this arrangement, by which persons,

(*y*) *Churchwardens' Accounts*, Camden Society, Vol. CII. p. 141.

(*z*) *Ibid.* p. 144.

BOOK I.
CH. VI.Ludlow : limit
of residence.

although they might cease to continue parishioners, yet still had some sort of right to a pew or half-pew, or possibly they may have had legal advice; for in the year 1570-1, under the heading of "The receiptes for pewes letten this yere as followeth," the entry of the grant of half a pew to James Fennell, goldsmith, runs thus (*a*):—

To have & enjoye the same in as ample manner as the said Stringer had the same; provided never the lesse, if the said James do departe out of this towne to dwell in another place, & be absent one holle yere together, his interest in the said pewe to determyne. And it shalbe lawfull to the bailieffes & churchwardens then being, to graunt the same over to another person for the benefite of the parish. Provided also that he shall not by any meanes advaunce the said pewe to any higher altitude, or streitch it owt in leingth or breadthe, then it nowe is, upon payne of forfeiture (of) his interest. The residowe of all the pewes hereafter to be graunted with like fforme vi^s

Reversions.

It is worth while to give a few extracts relating to the reversions (*b*):—

1543. Item hyt ys grauntyde to Thomas Leawys that he & his wyf shall enjoye the half pewe in revercon after the decease of Master Hare, now in his possession, payinge ij^s
Item hyt ys grauntede to Richarde Waties half of the pewe which Thomas Leawys hath in possession, payinge xx^d

(*a*) *Churchwardens' Accounts*, Camden Society, Vol. CII. p. 147.

(*b*) *Ibid.* p. 16.

Some seats are described as kneeling places:—

		BOOK I. CH. VI.
1541 (c). Ressevide of Walter Torites wyf for Annes Davis knelynge place	xij ^d	Ludlow : kneeling places.
Resseyde of Rycharde Rawlens wyf for Elsabeth lywyns knelynge place . . .	viiij ^d	
1545 (d). Item, receyvede of Elizabeth Glover for her knelynge place behynde the northe churche dore	viiij ^d	

And there were some unappropriated seats called “the comen pews,” and also “a forme for folkes to sytt upon.” The churchwardens also received money for “leystalles,” but whether these were pews or seats does not distinctly appear here, but from what we have seen elsewhere, were probably burial places:—

1540 (e). Reseyved of mastere Foxe for m ^r wardens leystalle	vj ^s viij ^d
Reseyved of ser Richard Bensone for his Lent leystalle	vj ^s viij ^d
Reseyved of the good wyfe Benet for hyr husbandes leystalle	vj ^s viij ^d

Also for “pytts,” but these were certainly for burial; *Leystalles and pytts.*
e.g.:—

1545. Receyvede for Mr. Harez pytt . . .	vj ^s viij ^d
--	-----------------------------------

A strong proof of the singularity of this system is afforded by the fact that it was the ground of litigation in 1693, when the Court of Queen’s Bench (f) granted a prohibition of the Bishop’s Court, on the ground that

(c) *Churchwardens’ Accounts*, Camden Society, Vol. CII. p. 9.

(d) *Ibid.* p. 23.

(e) *Ibid.* p. 5.

(f) *Lutwyche’s Reports*, p. 1032.

BOOK I.
CH. VI.

Church-
wardens'
authority.

the right which the churchwardens of Ludlow claimed to erect and demolish pews without ecclesiastical sanction could be possessed under no other title than that of prescription, a species of title which the ecclesiastical courts were incapable of trying, there being a well-established rule that questions of prescription can only be tried (unless by consent) at common law, by an *action on the case*, in the King's Bench (*g*), for the ordinary cannot meddle with a temporal right (*h*).

It does not appear that any further steps were taken in the Ludlow case, so that there was no decision whether the right claimed by the churchwardens was or was not capable of being maintained. In other similar cases the courts of common law always refused the application for prohibition, on the ground that the parishioners cannot prescribe to dispose of the pews exclusive of the ordinary (*i*); that the churchwardens can only act under him, and "cannot jostle out his authority" (*h*).

Right to assign
claimed by
various
authorities.

The complete variety and discordance of the authorities by whom any general appropriations were made (other than the bishop, by faculty) afford a strong presumption against their claims having the foundation of a legal basis; and in no case have they, when tried, been supported by law.

Lord of manor,
and others.

The assignation of seats at Assheton-under-Lyne, was made by the lord of the manor; that at St. Mary Wool-

(*g*) *Palmer's Reports*, p. 424; *Hutton's Case*, *Latch's Reports*, p. 116; *Mainwaring v. Giles*, *Barnwell & Alderson's Reports*, Vol. V. p. 361.

(*h*) *Swetnam v. Archer*, *Modern Reports*, Vol. VIII. p. 338.

(*i*) *Presgrave v. Churchwardens of Shrewsbury*, *Salkeld's Reports*, Vol. I. p. 166.

(*h*) *Langley v. Chute*, *Sir Thomas Raymond's Reports*, p. 246.

church Haw (if genuine) under the authority of the lord mayor of London; that at Ludlow by the bailiffs of the town; some in London by the vestry; and in the case of St. Botolph, Aldgate, where we find the parish prepared to confirm a grant by the deputy of the ward, of leave to build a pew in the chancel, and although the numbers assembled were under the limit required by their standing order, they nevertheless proceeded. The entry is as follows (*l*):—

BOOK I.
CH. VI.

Bailiffs, &c.

Deputy of
ward.

Memerandum that a vestrie was warnd to have been howlden in owre prishe Church the xxvth Daye of Marche in Año 1587 and ffor that the number of six of ether ende ded not apeare acordinge to the order sett downe ffor the same there was no vestrie held the sayde daye. But that ffor Master Dove was graunted by Mr Richard Casye, Deputie of this Warde as also By Mr Tobie Woodd, Henrie Connawaye & John Gowsell, beinge Churchwardens, sufferance to Builde a pewe ffor him selfe and another ffor his wyfe to sitt in w^{ch} he sholde Builde at his owne chargis Beinge in the chaunsell, the sayde Leve was graunted hem before By them; and the people Beinge at this tyme assembled ded give there assent that the fforenamed p^rmiš by m^r Deputie & the Rest before named sholde stande in effect, et c.

At St. Michael, Cornhill (*m*), the seats were numbered (apparently) in 1555–6 by order of “my Lord of London,” though this may have most probably been, not the Lord Mayor, but the Bishop. And in the case of St. Margaret, Westminster, the presumption that the seats were disposed

My Lord of
London.

(*l*) St. Botolph, Aldgate, *Parish Clerk's Book*, at date.

(*m*) *Archæological Association Journal*, Vol. XXIII. p. 326.

BOOK I.
CH. VI.
Westminster.

of without any legal authority appears clearly by the fact that a payment or rent was charged by the churchwardens for the special privilege of an appropriated or private seat: a practice which has been reprobated by the Ecclesiastical Courts whenever it has been set up (*n*).

That bitter writer, the vituperative Bale (*o*), includes in the same category of wicked money-making, "All Shrynes, Images, Churchstoles, and pews that are well payed for."

Certain
gentlemen.

At Eceles, Lancashire (*p*), it appears by documents preserved in the parish, that, between the years 1595 and 1598, certain gentlemen of the parish at a meeting for taking into consideration the question of repairs of the church and the furnishing of the same with new pews and forms, ordered and agreed that:—

The Church-wardens now for the time being, shall have power and authority to appoint places for the gentleman of the same parish, and also for the Vicar, according to their degrees and calling; and in like manner shall have authority to place the rest of the parishioners, as well Husbandmen and Cottagers, as others of mean estate and calling; having a special regard to their charges and payments which they have severally paid towards the repair of the said Church and making anew of the said forms.

A simple usurpation by those who paid highest (though all necessarily paid according to their rental) of the right to a choice of seats. The arrangement was carried out at

(*n*) Haggard's *Consistory Reports*, Vol. I. p. 318.

(*o*) Bale's *Image of Both Churches*, Bb. gloss. 12.

(*p*) *Account of Seats in Churches in the County Palatine of Lancaster*, by J. Harland, F.S.A. (reprint from *Church of the People*), p. 9.

a subsequent meeting and an allotment made to the various owners of manors and farms, and next to other parishioners according to the amount of levy paid, men and women being placed separately: and the rest of the parishioners were inhibited and monished to refrain from intruding. In fact, from a parish church it became a sort of proprietary chapel; but with the difference that here the proprietors had not built, but had only spent a trifling amount in repairs and fittings.

BOOK I.
CH. VI.

Certain
gentlemen.

The case of St. Michael, Cornhill, affords a very striking instance of the extraordinary assumption by the vestry of ecclesiastical rule; in fact, they acted as though they were the ecclesiastical rulers, and the rector a parish official under their orders, like the beadle. To confirm what otherwise would appear an exaggerated statement, it may be well to give the following extracts from the vestry minute book (*q*):—

Vestry assuming to control divine service.

These things ensewinge were concluded in a Vestry holden in this Parishe of St. Mighells in Cornehill the xvith of May m^l v^e lxiiij being then person John Philpott, Clark, & Churchwardens Nichäs Wheeler, Miles Mording and (blank; *Richard* in next leaf) Mather. The most substanciall in the parishe pnt & geving ther consent therunto.

In Primis that the first Sonday of evey moneth (being none other lawfull ympediment) com̄vnion of Christs body & blood be reventle ministred (Warning the Sondaye before to be geven of the same) and so those that be godlie minded be com̄vnicate.

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CH. VI.

Item evy second Sonday Children Ɖ 3vnts after evening prayer to be catechized.

Item the Quere to be enlarged, &c.

Vestry ordering parishioners to keep their seats.

Then is the following minute relating to the arrangement of the parishioners in the seats, from which it would appear that they were not accustomed, and did not like to be confined to specified seats (*r*):—

Order for keping their pewes on pain to forfeit ij^d the first tyme & iiij^d the second.

Item evy man that on the hollie day kepeth not his owne pewe, but setteth the service time in other pewes, for ye first tyme ij^d & the seconde time iiij^d, to be employed to the poore's boxe; provided eny at the lessons & the 3mons the more better to heare may remove.

The step does not seem to have been effectual, for there appears another order of vestry in 1572 (*s*), to the same effect; the money to be paid “w^t owte dennyall and the same to be pronouced bye the Curatte at evenynge sarvis.”

A similar instance of assumption of authority appears in a criminal suit in the diocese of Durham (*t*), where

Richerd Rawlinge being at the divine service saing the morning praier * * was requiered to put off his surples, according to the will of the xxiiii. of the parish (*i. e.*, the Vestry), & gyve the same to S^r John Peirt, articulate, to say furthe the morninge praier.

(*r*) St. Michael, Cornhill, *Vestry Minute Book*. The greater part of these extracts are printed in the *Cornhill Accounts*, pp. 229 and 230; and the latter part also in the *Arch. Assoc. Journal*, Vol. XXIII. p. 326.

(*s*) *Cornhill Accounts*, p. 238.

(*t*) *Ecclesiastical Proceedings in the Diocese of Durham*, Surtees Society, Vol. XXI. p. 228.

CHAPTER VII.

FACULTIES.



BOOK I.
CH. VII.

Origin of
Faculties for
seats.

To the favour shown from early times to kings, nobles and patrons, we may with probability ascribe the arrangement for seating parishioners according to their degree in the social scale, though we may be unable to trace it more immediately. It is easy to imagine that if the great man of a village possessed, as of right, an eminent position in the church as well as the parish, another of almost equal position would make a similar claim for himself. In the gradual change which has been taking place in social life for many hundred years, social distinctions of position have become gradually less and less clearly defined, until at the present day it is almost impossible to draw any positive line of demarcation ; to a great extent (excepting in very rural parishes) each man's grade must be considered by itself individually. Even under the circumstances existing three centuries ago, the attempt to seat parishioners according to their degree involved very great litigation, as the records of the ecclesiastical courts abundantly prove.

Man is a creature of habit. It is likely that while many persons would, consciously or unconsciously, each acquire a habit of occupying a particular place, their

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CH. VII.

Peaceable
possession.

neighbours would, from friendly feelings or peaceable motives, be disinclined to interfere; so that what may be termed a "possessory right by courtesy" was acquired in course of time, and at length was supported, by authority so far as the decreeing of peaceable possession against mere intruders. The prevalence of such a habit appears in many of the extracts already given, and such Decrees are found in the records of the ecclesiastical courts. There is every reason to suppose, that a very large proportion of the pews, which are now claimed to be held by prescription, had no other origin.

Select vestries. Probably the authorization of select vestries, by Episcopal authority, had a powerful effect in extending the system of appropriation of churches which had been introduced a short time previously. We are not aware that anything has been written concerning the origin of select vestries, but the facts shown by an examination of the records of ecclesiastical courts are very remarkable. Early in the seventeenth century a few individuals presented themselves to the bishop's chancellor, and alleged that it was desirable, for the sake of preventing disturbances and disagreements at meetings for parochial purposes, that the government of the parish should be vested in a certain number of the chief parishioners (varying in different cases from 10 to 44 [*a*]), who were to have the entire control, and also the power of filling up vacancies in their body. They of course nominated themselves, and also the remainder. Upon such an application, entirely

(*a*) At St. Mary Mounthaw, London, in 1612, there were nine beside the parson or curate (*Vicar-General's Books*, Vol. XI. fol. xxxvi). At Stepney, in 1613, there were forty-four (*Ibid.* Vol. XI. fol. xcvi).

unsupported by evidence, and without consulting the parish at large, the chancellor constituted the applicants and their nominees to be a select vestry to have the control of the parish; and the vestry, thus formed, filled up all vacancies in their own body, so that the parish at large would never again have the control of its own affairs.

BOOK I.
CH. VII.
Select Vestry.

The earliest of such Faculties granted in the Diocese of London is dated in 1611 (*b*); their origin is referred to by Spelman, thus (*c*):—

Spelman's
opinion of
them.

What they (the Vestries) have used to do Time out Mind, I call not into question; but those Vestries that within these thirty Years, or thereabout, have left their ancient Form, supported by a lawful Prescription, and contrived to themselves a new Society, Power and Jurisdiction over the rest of the Parish, countenanced by an Instrument from the Ordinary under the Seal of his Chancellor; and (as new Things must have new Names) are commonly stiled Selected Vestries. * * To deal plainly, I think those Instruments confer more Money upon the Chancellors, than Authority upon the Vestries. * * What have they now for their Money? or more (in effect) than if a private man had granted them as much?

And his opinion evidently was that the vestry had lost by abandonment what rights they previously might have had by Prescription, and had adopted the new system under a grant which was simply fallacious and unmaintainable.

It might no doubt be argued that part of the bishop's

(*b*) St. Margaret, New Fish Street, London; *Vicar-General's Books*, Vol. XI, fol. xxviii.

(*c*) Spelman, *De Sepultura*, originally published in 1641; fol. ed. 1723, p. 184.

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CH. VII.

Faculties for
Select Vestries.

legal authority was delegated to the Select Vestry; but it cannot be supposed that a bishop could thus for ever deprive his successors, as well as himself, of any power capable of delegation.

In a modern case Lord Tenterden said (*d*), “It is clear that these Faculties have no validity at Law.”

The Act to lead the Decree, to which we have adverted as being the first which established a select vestry in the diocese of London, is dated the 10th February, 1611, and bears the following heading (*e*):—

Negotiū assignacoñ^s et confirmationis certi numeri pochianorū s̄ci margarete in nova Piscaria Londoñ in sacristos eiusdem pochie, Anglice Vestrie men, viz. 27, successive observand et continuand pter R̄corem seu Curatū eiusdem ecclie in ab^{nia} R̄coris.

The Decree, which follows the Act in the book, recites that they had been accustomed so to act, but there could not now be found any public instrument ratifying and confirming the same; and it proceeds to appoint the vestry as prayed, but with the stipulation that such vestry should not call before them any minister, preacher, or curate living in the parish, to be questioned, but should leave them wholly to their calling, and to the hearing and censuring of the ecclesiastical or temporal magistrate; nor should the vestry interfere with the churchwardens and sidesmen in making their presentment; and adding that in the event of meddling with such matters, this

(*d*) *Golding v. Fenn*, *Barnwell & Cresswell's Reports*, Vol. VII. p. 781.

(*e*) *Vicar-General's Books*, Vol. XI. fol. xxviii.

allowance to their vestry concerning ecclesiastical matters to be merely void, as if it had never been granted.

BOOK I.
CH. VII.

In the case of St. Mary Mounthaw, London, only two months later, the churchwardens allege that (*f*)—

Faculties for
Select Vestries.

Thorough the geſſall admittance of all ſorts of the piſhioners unto their veſtries there falleth out great diſquietneſſe and hinderance to the good pcedings w^{ch} they deſire ſhould be in their piſhe, by the diſſen(tions) of the inferior & meaner ſort of the multitude of the inhabitants being greater in number & thereby more ready to croſſe the good pcedings for the benefit of the church and piſh, than hable to further by counſell, or otherwiſe, the good thereof.

No doubt vestry-meetings would be more harmonious if admission were restricted to a limited number of one party. The decree was made with stipulations similar to those in the preceding case.

The official foundation, or re-constitution (as it might be), of select vestries being thus inaugurated by the Chancellor of the Diocese, and its convenience to those who wished to rule being very palpable, applications for similar powers flowed in, and a succession of grants was made. Spelman hints that the money paid to the Chancellor had something to do with it; and there can be no doubt that the number of Faculties for Seats, and Decrees for Select Vestries, each being a new class of business introduced early in the seventeenth century, must have furnished a not inconsiderable addition to the official income.

(*f*) *Vicar-General's Books*, Vol. XI. fol. xxxvi.

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CH. VII.

Rapid increase
of Select
Vestries.

When, however, a precedent had been made, it was quickly followed up, and the number of such Faculties in the next thirty years (alluded to by Spelman) was very considerable. They spread, in fact, with epidemic rapidity, and became so familiar as to pass without thought of questioning.

But it was, however, not unreasonable that vestries appointed under the assumed authority of the bishop should suppose their appointment to be good and valid, and should, as they actually did, take upon themselves the rule of the parish.

That a body thus self-nominated would be ready to grasp the loosened reins of ecclesiastical government, and, amongst other things, appropriate to the use of its members individually, and to their families and friends, the best seats in the church, to their exclusive use, was what, however unjustifiable, might be expected from human nature, which in spite of all reasoning to the contrary, will act upon the motto "Might makes right."

Faculties to
individuals.

The appointment of Select Vestries operated towards a general arrangement of the occupation of the seats, but the most numerous class of Faculties was that granted by the Ordinary upon the application of individuals, for the appropriation to them of specified seats, and these probably had their origin in an extension of the privilege under which the patron of the church, as of right, and the squire, by courtesy, occupied places in the chancel. In the City of London the custom with respect to the chancel was peculiar, inasmuch as the parishioners performed what was elsewhere the duty of the rector, and defrayed the expenses of repairing the chancel; and they still claim,

through the churchwardens, the right to allot the chancel seats equally with those of the nave. In fact in one case (St. Olave, Bread Street) in 1598 (*g*), the churchwardens, in the names of themselves and the parishioners said, they

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CH. VII.

Faculties for
seats.

chalendge unto them selves, a right belongeth, to deale in placeinge, and displaicinge of pewes; and to the Churchwardens as their ministers.

Whereupon the Vicar-General said:—

I thinke itt fitt, when ther is occasion, that the ordinarie be allwaies therein consulted, for continuance of his Jurisdiction, and for redressinge of any whoe shall finde them selves agreved.

The earliest known Faculty for appropriation of part of a church to individuals, that we have met with, relates to the church of Chesterton, Cambridgeshire. It is dated the 4th April, 1579. The books which contained the record of Licences or Faculties, and Acts of Court upon granting them, are wanting up to a much later date; but this Faculty is preserved by the fact of its entry in a book of precedents, presumably collected by the Registrar of the diocese, at dates earlier and later than 1579 (*h*). It is most elaborately and carefully worded, as though its composition had been a study, and the form and style is rather that of a Conveyance than of an ecclesiastical document. The whole document is re-entered in the same book, apparently at a different date, as some of the contractions are extended ungrammatically; the re-entry (*i*) affording

Earliest
Faculty in
1579.

(*g*) London Diocesan Registry, *Vicar-General's Books*, Vol. VIII. fol. xli.

(*h*) Ely Diocesan Registry. The volume, which is not lettered, is called a "*Book of Precedents*;" this document is entered at fol. clxxxvi.

(*i*) Ibid. fol. ccviii.

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CH. VII.

Chesterton
Faculty.

some presumption that it was unique, and certainly that it was highly valued. It is curious to find that the earliest record of a faculty for a seat granted in the diocese of Rochester (*k*), is also re-entered close to the end of the volume which contains the original entry, as though, being thought of much importance, it was desired to render it more conspicuous by a place at the end of the book, than it could be where it occurred in order of date amongst other records. This example is dated in 1639, and refers to an aisle, or chapel, in St. Margaret's, Rochester, attached to a manor house.

The Chesterton example recites, that Philip Peacocke and Geoffrey Ewsden, the churchwardens, and William Spicer, an inhabitant, on behalf of themselves and others (generally), alleged that Thomas Lorkyne, alias Larkyne, of Cambridge, gentleman, doctor of medicine, and regius professor of medicine in the University of Cambridge, had for five years past been a householder and owner of freehold lands, tenements and hereditaments in the parish of Chesterton, equal in amount to that of any other parishioner or freeholder there, and had up to this time no “*sedes, seu locus aliquis, sive sedile*” convenient and suitable to the quality of a person holding such property. And they prayed that there might be assigned to the said Thomas Lorkyne, alias Larkyne, his wife, and children,

ac posteros suos firmariū q^b, seu firmarios ac assignatū, seu assignatos suos, solūmodo, sepatim, et

(*k*) Rochester Diocesan Registry, *Reg. Spir. Roff.* A.D. 1281-1640: It purports to grant a seat in St. Margaret's Church, Rochester, to the proprietor of the manor-house of Great Delce in that parish, and is dated 16th May, 1639.

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Chesterton
Faculty.

p sese quibuscunq̃ temporibus futuris existentes, locare, sive collocare, commodissime posse in sedibus, seu sedilibus, quibusdam, et loco quodam, ex pte boriali dēte Ecclīe p̃x^o adiacent^o ad cancellum (anglice vocat̃ the Chauncell) iām, ex manu sinistra, ostij quo introitur in dētā Cancellam iux^a ptem et latus sacelli cuiusdam, Ecclīa poch^{li} predⁱ in quo Jof̃es Batforde gen^{os}, tempe divinor^o, sedere et esse consuevit; continente in longitudine ab oriente occidentem undecim pedes, in latitudine, vero, a boriali pte ad australem, septem pedes.

Thereupon the Vicar-General, having maturely deliberated, assigned and decreed as prayed: and then adds in order to clinch it:—

quo magis post hac evitet^r discordia, lis, sive controversio, a quorum pochiano dēto pochie postea movend^o, ac ut idē p̃fatus Thomas Lorkyne als Larkyne ceterisq̃ p̃dict^o, quiete ac pacifice p̃dēte assignaōe, et decreto, tempibus futuris quibuscunq̃ gaudere possint ac valeant, absq̃ vexaōe, molestāōe seu pturbaōe cuiuscunq̃, seu quoꝝcunq̃ postea, habend^o seu fiend^o, pochianis seu inhabitantibus pochie p̃d^o, publicand^o, seu denūciand^o fore in inscript^o, necnon de et sup̃ p̃missis, oībus et singulis, unū seu plura, instrumentum seu instrumenta publicū, seu publica, . . sigillo officii n̄ri muniend^o ordin^o.

Then follows a notarial act by the registrar that he had, in pursuance of the above decree, drawn up a public instrument.

This pew is no longer in existence (l).

(l) We are indebted to the Rev. E. A. Smedley, the present vicar, for this information.

BOOK I.
CH. VII.

Invalidity.

It is scarcely necessary to point out that such a grant to a man and his family and successors, and his tenants and assignees, and unattached to a house, would be now held invalid, unless (perhaps) as regards himself individually.

System extended to other classes.

There was still some sort of reason why an alderman, as a leading man in a parish, should claim, or receive, a seat in the chancel. But it was not likely that the line would be drawn immediately below the alderman, nor would those next to him in social position fail to experience with equal keenness the desire for personal dignity, and ease, and comfort; especially when, as ecclesiastical feeling diminished, men came to regard themselves less as part of the congregation than in their own isolated individuality. The independent English sentiment that "every man's home is his castle"—a desire for exclusive right (*m*)—would naturally be applied to seats in church. The result was that a man, looking around him, and observing a convenient vacant space, applied to the Ordinary for permission to build a pew there for himself and family, and his petition was granted, very generally (as it would appear) without proof or inquiry, and very frequently in a form which Ecclesiastical Courts hold to be illegal. The earlier faculties were very generally for leave to erect seats, and the first example we have met with is at Worcester, and is dated in 1580: the only record of it is as follows(*n*):—

Early Faculties.

Iñm vñdecimo die Septembris anno dñi 1580 pñ
emanavit liña (licencia) erigendi sedile in Ecēlia
de Stretton sup fosse.

(*m*) "A poor virgin, sir, an ill-favoured thing, *but mine own*."

(*As you like it*, Act V. scene 4.)

(*n*) Worcester Registry, *Whitgift*, fol. li.

Whether this seat was for the use of an individual, or for the parish generally, does not appear.

BOOK I.
CH. VII.

The book of Decrees and Instruments, commencing in 1583, does not contain any example until the next century (*o*); and the first grant that we have met with in that Diocese is not till the year 1610 (*p*), and then only for leave to erect a seat and occupy it during the Bishop's pleasure.

Early Faculties.

Looking to the capital as containing the densest population, and as a place where social gradations would be most slightly marked, the diocese of London may be fairly assumed to furnish some of the earliest examples of faculties for seats. The records there (*q*) (which are fully corroborated by those of other dioceses) have been always very carefully entered, and remain in admirable preservation; an analysis is, therefore, practicable; and from the thirty-three earliest examples there may be deduced various facts having an important bearing upon our subject.

London Diocesan Records.

The existing books extend back to 1520. In addition to Decrees, Faculties, and official Acts immediately concerning the parochial clergy, and parish clerks, they comprise a considerable variety of subjects; such as licences

Variety of Faculties.

to preach,
to act as chaplain,
to keep a school,
to teach grammar,
to act as midwife,
to bury a suicide or excommunicated person,

(*o*) Worcester Registry, Vol. of Decrees and Instruments.

(*p*) Worcester Registry, *Bullingham*, fol. lxxxxvi.

(*q*) London Diocesan Registry, *Vicar-General's Books*.

BOOK I.
CH. VII.

Variety of
Faculties.

to bury a Papist (later),
to baptise 2 Moors,
to eat flesh in Lent,
to resort to other than the parish church ;

and in relation to the fabric—such as

to cover the church with tile,
to renew the font,
to take down a gallery,
to take down one church of united parishes,
and a formal note of the donation of a new chalice.

Why 1594
believed to be
the earliest.

This list is by no means exhaustive, but will suffice to show the variety and number of matters upon which the official grant, or sanction of the Vicar-General, acting in the name of the Bishop, was made and formally recorded and attested. It cannot, with the slightest reason, be supposed that a faculty or grant of a seat, or particular part of a church, would have been made and not entered: the order and system with which the records are entered, in a form and style evidently settled long antecedently, would alone suffice to negative such an idea. When, therefore, we find that the earliest entry respecting any faculty for a seat or place in church, occurs in 1594, the inference that *that* faculty was the earliest granted by the Court is unavoidable. Possibly on an examination of the records of other dioceses, examples somewhat earlier might be discovered, such as that at Ely, just mentioned ; but we are fully justified by the examination of these records of the diocese of the metropolis, in asserting that such faculties were not granted until quite the latter part of the sixteenth century. Were other ground needed, it is furnished by an analysis of the earlier London cases, from which it is

evident that the subject was a new one, and for a long time afterwards there was no order or system upon which these grants were made. It may also be noted that there is no form of faculty for seats, nor is the subject even mentioned, in the formulary entitled "*A Booke of Presidents exactly written in manner of a Register, newlie corrected, &c.: Anno Domini 1583,*" and published by the Assignee of Richard Tottle (*r*); although the collection of forms is sufficiently extensive to embrace such as—

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CH. VII.

Variety of
Licences.

A licence for a man to kepe on his cappe.

A licence for apparell, and to shoote in crossbowes, and handgonnes.

A condicyon to deliver a last of Salmon.

Nor is the subject mentioned in a well-known work by W. West, published in 1594, entitled "*Symbolæography* ; which may be termed the art, description, or image of Instruments, or paterne of Præsidents ; or the Notary, or Scrivener" (*s*).

When once the court had established a precedent, applications for similar grants were soon made, and a regular stream commenced, which in some dioceses has hardly yet ceased to flow.

Rapid increase
of Faculties
for Pews.

In 1594 was 1 grant.

In 1612 were 4 grants.

„ 1595 were 2 grants.

„ 1613 was 1 grant.

„ 1598 „ 2 „

„ 1614 „ 1 „

„ 1602 was 1 grant.

„ 1615 were 4 grants.

„ 1609 were 3 grants.

„ 1616 „ 5 „

„ 1610 „ 2 „

„ 1617 „ 5 „

„ 1611 „ 2 „

Thus we see that although previous to 1594 no such

(*r*) *A Booke of Presidents, &c.*, 16mo., Lond. 1583.

(*s*) *Symbolæography*, 8vo., Lond. 1594.

BOOK I.
CH. VII.

Affecting the
parish slightly.

grant was made at all in the diocese of London, yet in the first 23 years from that date there were 33 grants; and afterwards they became much more numerous.

Of the grants which we have specially noted from their being the earliest in date, a large proportion (about two-thirds) were probably only slightly in derogation of the rights of the congregation as then existing; but they were to enable persons of position in the parish to build seats for the accommodation of themselves, or of themselves and families; or to confirm to them the exclusive use of seats which they had themselves already built without authorization (*t*): in other words, to turn to good account space left vacant in the church, and not to appropriate to individuals, or families, the existing general seats to which the parishioners at large were equally entitled. Often it is so expressed, and in other cases it will reasonably be inferred. And this arrangement continued for some time, as in an example at St. Dyonis Backchurch, London, 1652, where the vestry granted 2 pews to a Mr. Polling, who said—

he wold willingly of his owne cost and charge make one compleat pue, provided that the vestrie wold be pleased to graunt that it might be for his owne use; and being taken into considderation it was voted that he shold have the said pues for his owne proper use during the time that he lives in the house where now is his present habitation" (*u*).

The mischief at the time was rather in theory than in practice.

(*t*) In the earliest faculty set out in full in the Diocesan Records of Worcester, dated 1610, leave is given to erect, but the right of future appropriation is reserved by the Bishop to himself and successors. Reg. *Bullingham*, fol. lxxxxvi.

(*u*) St. Dyonis Backchurch, *Vestry Minute Book*.

It is observable that the grants were made, in almost every example, upon an *ex parte* application, and entirely upon the unconfirmed statement of the applicant, (not even on oath,) who generally, but not always, alleged that the parson and wardens, or the wardens, or the principal parishioners, were assenting. There is no indication of any notice to the parish at large having been given in any case; but the reason probably was that (with an exception or two) no individual was interfered with. Such application and statement were treated as legal evidence upon which to ground the issue of a Faculty.

BOOK I.
CH. VII.
Made on *ex parte* application.

The claim of the churchwardens to appoint to every one where he must sit in the church would appear in the diocese of Ely to have been first enforced in 1605 and 1606, when persons were presented at the visitation of the Archdeacon of Ely (*x*); and amongst others, one Launcelot Ridley,

Seats appointed by churchwardens.

for that he will not be ordered for his seate in church, being appointed by the churchwardens:

and being interrogated on the next court day whether he had so done:—

Dixit, that he hath not nor doth sit in it. Wherefore

he was pronounced in contempt, and suspended *ab ingressu ecclesie*; rather a singular punishment, but no doubt a very effectual means of preventing a repetition of the offence.

Such presentments do not appear to have been made in

(*x*) Ely Registry, *Acta ex officio mero*, 1600-5, fols. lxxxviii. and lxxxviii.

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CH. VII.

Seats appointed by churchwardens.

the adjoining diocese of Peterborough (*y*), although the Act-books embrace a very wide range of offences: against clergy for performing marriages without licence, not wearing a surplice, and not preaching monthly sermons; against churchwardens for not keeping the church in repair, and for brawling in church; against others for not receiving the Communion, not resorting to their parish church, not paying levy to the church, for sleeping in church in service time, for slander, swearing and blasphemy, scolding, abusing the vicar, deferring marriage after banns had been published, fornication, frequenting alehouses and often drunk, using unlawful games or washing clothes on the Sabbath Day, and for being a recusant.

Seating according to degree.

The earliest mention we have met with of seating the parishioners according to their degree, under any show of authority (unless we except the remarks by the Judge of the Common-law court in 1493, as to what he supposed the ordinary might do, and in which he probably meant only to distinguish the two or three great men from the rest of the parishioners), occurs in the year 1577 (*z*), but it seems to stand alone for a considerable time. It happened at the union of the parishes of All Saints and St. Peter, Maldon, Essex, when (as it will be seen) with the consent of the churchwardens, the court, held at Prittlewell (*a*):

did order and decree, that the churchwardens of St. Peter's should cause and procure the parishners

(*y*) Peterborough Registry; *Registrum Stamford*; *Court Book*, &c.

(*z*) The orders of certain gentlemen of the parish of Eceles, in 1595, previously quoted, do not pretend to even a show of authority.

(*a*) *Precedents and Proceedings in Criminal Causes in the Ecclesiastical Courts of the Diocese of London*, edited by the late Archdeacon Hale, No. 479, p. 153.

there to repaire orderly to the parishe church of All Saintes, one Sondaies and hollidaies, as the parishners of All Saintes; and that the churchwardens of either parishe, shold joyne together in all matters and cause whatsoever, and everie parishner to be plased accordinge to his degree; the churchwardens of either parishe agreed to the order.

BOOK I.
CH. VII.

According to
degree.

Thus the system of giving ecclesiastical privileges according to social rank—at first only to the disadvantage, and now usually to the exclusion, of many, and frequently of an immense majority of the parishioners who had previously enjoyed an unquestioned right equal with those now specially favoured,—gradually and unconsciously attained that consideration which it now enjoys. Its precise origin and its development were unnoticed, until at a recent date the subject has attracted attention, and it now is seen to be of vast, and it may shortly prove to be of vital, importance to the whole Church of England.

Importance of
the point.

The grounds alleged as the basis for the application, and upon which these Faculties were granted, were most commonly that the applicant had been for some time a parishioner, but had not yet any suitable seat—"habito respectu condigno status et condicōnis" (*b*), or, "without anie seate fit and convenient according to their degrees and places" (*c*). A twenty years' residence was set up in one case (*d*); and at St. Martin Orgar (*e*), Sir John Garrard,

Grounds
alleged for
Faculties.

(*b*) Little Baddow; *Vicar-General's Books*, Vol. X. fols. lxxxvii and lxxxviii.

(*c*) Stepney; *Ibid.* Vol. XI. fol. clxxxii.

(*d*) St. Botolph without Bishopsgate; *Ibid.* Vol. XI. fol. xviii.

(*e*) St. Martin Orgar; *Ibid.* Vol. XII. fol. xxvii.

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knight and alderman, the applicant, alleged that he had been a parishioner for forty years and all that time had possession of a certain pew or seat for his wife and daughters or other gentlewomen, and he further alleged that he had a fair house in the parish and intended to leave it to his son and heir, with a complete estate to maintain it; and the seat was accordingly granted by the Faculty to him and his children succeeding him as dwellers in the said house. At other times it was stated by the applicant that he had built the seat at great expence; in other cases the grant is asked for as a kind of restoration.

Faculties
granted under
various names.

These instruments appeared under various names, not always exact or definite in their meaning. Thus, the heading in the St. Alban's case (*f*) runs thus:—

Negotiū continuacōis sedium sive sediliū pro Jacobo Carter et Johanne eius uxore in eccliā pochi divi Albani infra villam Divi Albani in coñ Hertford ad petiçōem sive pmoçōem ipsius Jacobi Carter.	}	Quibus die et loco corā dñō veñ- abile viro (i.e. Edward Stanhope,
---	---	---

Doctor of Laws, the Vicar-
General) comparuit psonale dñs Jacobus,
&c.

It will be observed that his right to the seats was simply that of having taken possession; so it is termed a business of continuing to him the seats. In other cases it is termed sometimes a business of assigning and confirming, or of confirming, granting and appointing; at other times it is called the grant of letters testimonial; and more frequently

(*f*) St. Alban's Abbey; London, *Vicar-General's Books*, Vol. VI. fol. clxxxv.

it professes to be a licence, or the grant and concession of certain seats or sites for them.

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CH. VII.

In a proportion of these cases the grant is a kind of restoration, to the present owner of a house in the parish, of rights which had been anciently possessed by the owners of that house: pointing to the rights reserved to himself by a lord of the manor, or founder of the church.

Faculties
under various
names.

In one example (*g*), a clergyman and his wife obtained two pews, one of them on a transparent pretence. They alleged that he had lately purchased an ancient house in the parish called “Bells,”

On transparent
pretence.

where (by reason of the scituation and ayre) she for her healthes sake for five monethes past, and he also doe sometymes dwell;

and not having a convenient seat, and there “also wanting a seat for women who came after Childbirth to give God thanks;” they offered to build, in a void place, a seat for themselves and one for such women. So a faculty was granted to them for leave to build two pews, one for themselves and one for their servants, but the servants to remove out and give place to the women coming as aforesaid, and such women as accompany them, possibly some half-dozen times in the course of the year. Thus, with a show of providing occasional additional accommodation to a part of the parishioners, they acquired two new pews for themselves and servants. One would scarcely expect so palpable a sham.

In a considerable majority of cases a reminiscence of the privileges from early times accorded to the patron, or lord, or other parishioner of eminent position, enlarged to em-

Granted to
persons of
position.

(*g*) Tarling; London, *Vicar-General's Books*, Vol. XI, fol. ceviii.

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CH. VII.

Granted to
persons of
position.

brace the persons of chief position in the parish, is clearly perceptible. The earliest Faculty furnishes an example. It is that referring to St. Alban's Abbey (*h*), in 1594. The applicant alleged that he had for five years, without objection, had his accustomed place on the one side of the church, immediately behind the mayor, and that his wife had occupied a front seat on the opposite side, but that notwithstanding,

nonnulli eo non vocat̃ nec aliqua iusta et sufficieñ
causa allegata et pbat̃ quare d̃c̃us Jacobus (the
applicant) et eius uxor a suis sedilibus amovere
debeant, publicè Jactitaverunt, professi sunt, et
dixerunt se velle amovere pred̃c̃, in derogac̃õem
bone et honeste fame d̃c̃e Jacobi et Johanne uxoris
sue.

That they must have been persons of the highest position in the place is evident from the fact that they should for so long, without dispute, have been permitted to arrogate to themselves the exclusive use of two of the most dignified seats in the church. The faculty simply gave them a possessory right till cause should be shown to the contrary. In other cases the grantee is a knight or lady, an esquire or gentleman; in the city an alderman. In one example (at Theydon Gernon [*i*], 1616) the bishop, as patron in right of his dignity, grants seats to his chancellor (a parishioner), who formally issues the faculty to himself and wife.

To man and
his family, &c.

The grants are usually to a man and his family. Or they were made to him and his family and household, but

(*h*) St. Alban's; London, *Vicar-General's Books*, Vol. VI. fol. clxxxv.

(*i*) Theydon Gernon; Ibid. Vol. XII. fol. xx.

for what period of time is seldom expressed; and the reasonable interpretation is that it intended the grantee and his immediate family, without extending to his more remote descendants. Still it may probably have been in consequence of no limit of time being fixed that the grantee came to look upon the pew or seat as an absolute possession which descended to his heirs or assigns, and subsequently attained a pecuniary value as an adjunct to a house, or even otherwise saleable.

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CH. VII.

To man and
his family, &c.

But in some cases the Court did fix an express limitation to the period of possession. In the first faculty in the diocese of London (the St. Alban's case), the grant was simply one of peaceable possession till cause to the contrary was shown to the Court; the earliest faculty in the Diocese of Worcester, dated 1610 (*k*), expressly reserves to the Bishop and his successors full power to remove the seat, the permission to erect which was the object of the faculty. Sometimes it was only to endure whilst the grantee continued to be a parishioner; and in one case (*l*), where the applicants were three in number, the seats were confirmed to them "so long as you and every of you or any of you shall be parishioners." In other examples it is limited to continuance as inhabitant of a specified house, or it is granted on the ground of its having been an ancient appurtenance to the house. Occasionally it is to take effect only during the pleasure of the churchwardens, or the grantee is liable to displace-

Sometimes
expressly
limited.

Various
limitations.

(*k*) Ecclesia sive Capella de Ullenhall aîs Ownall; Worcester Registry; Reg. *Bullingham* and others, fol. lxxxvi.

(*l*) St. Mary Strond aîl Savoy, 1617; *Vicar-General's Books*, Marten, fol. xxix.

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CH. VII.

Various
limitations.

ment with the consent of the court and the rector and other parishioners.

More frequently the grant is made to the applicant and his wife, and the survivor of them; or to him and his wife and children (jointly and severally in one case (*m*)); or to him and his family; or to his wife and her female friends. Most usually it is to the applicant and his family and household, without any apparent intention of granting it as a permanent privilege.

Consents
alleged.

With respect to consents which were generally alleged in the application, it would appear that in the case of seats in the chancel, it was generally stated that the parson or appropriator was consenting. For seats in the nave it is most frequently mentioned that the parson and wardens assented; sometimes the wardens alone are specified; sometimes the wardens and principal parishioners; or even the parishioners alone; occasionally the vestry: and in one case, previously mentioned, the vestry set up a claim to the right in exclusion of the ordinary.

Faculties
granted with-
out system.

The absence of any system in making these early grants will thus be seen. There appeared to be a general idea that vacant spaces should be permitted to be occupied; that seats formerly possessed by the owner of an ancient house should be restored to its present owner (though only owner by purchase); that persons of position should have a preference; that long possession should not lightly be disturbed; that consent of somebody should be alleged; that, except in the few disputed cases, no evidence whatever was necessary; that no one appeared to be damned.

(*m*) St. Clement Danes, 1595; *Wear-General's Books*, Vol. VI. fol. cexliii.

Beyond this there was no rule or principle. In fact so great was the laxity, that in one case (*n*), permission was given to move all the other pews further down, but still with a stipulation that they should not be diminished nor the aisle defaced. In another (*o*), the applicant, a widow, was decreed to be restored to the “uppermost room” in the pew, as before, and her husband’s place also to be restored if she should marry. In another case (*p*), the Court directed the churchwardens to place “Mr. Church his daughters, when God should send them him, in the said third seat.”

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CH. VII.

No rule.

Very generally seats were granted for the benefit of individuals, but there are a few examples of faculties for a general arrangement of seats in a part or the whole of the church; as at Watford (*q*), where the Vicar-General issued a commission to the vicar and wardens “to take vewe of all the sevrall and ptticular decaies, ruines, and defects in the said church & of the walles, windowes, pewes, and seats therein,” and to rate and tax the parishioners: “And also to appoint fitt and convenient seats, pewes or places to all and everie the pisheners of the same pish.” It will be observed that *all and every* the parishioners were to have seats.

Occasionally
for parish
generally.

For the church of Hadham, Essex, a commission was issued in 1602 (*r*), addressed to “Theophilous Aylmer, Doctor in divinitie, Archdeacon of London and pson of

Hadham.

(*n*) Great Warley; London, *Vicar-General's Books*, Vol. VI. fol. cccxxviii.

(*o*) Theydon Gernon; Ibid. Vol. XII. fol. xx.

(*p*) Earle's Colne; Ibid. Vol. XII. fol. xxxviii.

(*q*) Watford; London, *Vicar-General's Books*, Vol. XII. fols. xxxvii and cclvii.

(*r*) Hadham, Essex, 1602; Ibid. Vol. IX. fol. lxxiii.

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CH. VII.

Church-
wardens of
Hadham.

hadham in the Countie of Harts," and the four churchwardens, consequent upon a complaint of disorder, for that—

boyes and younge men doe place themselves very disorderly amongst the aunscient sort of pishion's ther, and bothe women and men, maydens and mens wives, promiscue, sitt together, bothe to the offence and disturbance of the congregation assembled at publike prayer. For reformation whearof, &c.

From this it would appear that the churchwardens here claimed no right to regulate the sittings; for, had they possessed such a right, the faculty, conferring no new power, would have been useless; the remedy for refusing to obey them, if they were entitled to regulate the sittings, would have been the same as for disregard of the faculty, viz., by presenting the offenders at the next visitation, or by citing them to answer in the Ecclesiastical Court.

Hackney case. And an instance of rents is presented in the case of Hackney Church, 1598 (*s*), so singular and unique that it requires some explanation not now forthcoming: one can only imagine that *nemine contradicente*, the Vicar-General took into his consideration the petition of the parochial authorities. Beginning with the usual form of heading—On Wednesday the 12th December, 1598, before the Venerable Edward Stanhope, Doctor of Laws, Vicar-General, and in the presence of Thomas Pell, Notary Public,—the formal Act runs as follows:—

Quibus die et loco, comparuerunt mñi Johnson (*t*),

(*s*) Hackney; *Vicar-General's Books*, Vol. VIII. fol. lxxxxij.

(*t*) Hugh Johnson was vicar of Hackney for forty years, according to Robinson in his *History of Hackney* (Vol. II. p. 157); the date of his

et Jolies Sweete, et Edwardus Makeris, et exhibuerunt domino Judicanti quendam librum, intitulat^o the vestery booke, in quo, inter cetera, continentur ut sequitur. The names of the parishioners that are agreed at a vestry howlden on the seaventh daye of December 1595 in and concerninge a cessment to be made for the pewes w^{ch} is for the mainテナunce of the church as followeth—John Machill, Hughe Johnson, and others the parishioners, to the number of 32 or 33, whose names are to the said booke subscribed; Deinde dicti Mr. Johnson et gardiani iam pntes virtute dñi actus, sic p eos interpositi, exhibuerunt dño judicanti quandam papiri schedulam continentē the plattforme of the Church of Hackney aforesaid, and of all the sefall pewes in the said Church conteyned, together wth a pticular ratement of every pewe what itt is sett att by the yeare; the w^{ch} ratement the said Mr. Johnson and the Churchwardens doe desire that, by the authoritie of his Courte, may be allowed; w^{ch} beinge perused by the Judge, for that some of the yearely seassemente for the said pewes doe seeme unto him to be very greate, the iudge doth order that they shall take the said plattforme again, and shall drawe a new one, and shall call a Vestry, whereatt the said Mr. Johnson, the Churchwardens, the Justices of peace that dwell in the parishe, and soe many as doe use cōmonly to be att vesteryes, shall be pnte; w^{ch} said vesterye shall be warned againste Sundaye next, and then those that shall be att the said vestrye shall make

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CH. VII.

Hackney case.

institution is not given in Newcourt's *Repertorium* (Vol. I. p. 620). It may be presumed that he was held in esteem as a preacher from the fact that upon his monumental Brass, still preserved in Hackney Church, he is represented in his pulpit. The brass may have been, as was often the case, engraved in his lifetime.

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CH. VII.

Hackney case.

a survey of all the said pewes in ther Church accordinge unto the plat^t, and shall sett downe such moderate rate as to them shall seme convenient, uppon everye pewe; and shall putt their handes uppon the back side of the said plat^t, and exhibit unto the Judge of this Courte uppon Tewsdaye next, who will then take such order for the confirminge therof as shall be fitt.

Notwithstanding this nothing further seems to have been done.

Rapid increase. One example naturally led to another: thus Edmonton (*u*) is followed three years later by Enfield (*x*): Little Baddow (*y*) by Great Baddow (*z*); a grant for St. Swithin, London Stone (*a*), is followed two years later by a second; and there are two for Theydon Gernon (*b*) in the same year.

Eight out of thirty-three are for London parishes.

Commence-
ment in
usurpation.

A considerable proportion of these faculties commenced in usurpation. The applicants had already built pews before they came to the Court, and their object was to obtain authorization, not for what they desired to do, but to confirm to them what they had illegally taken: and it may reasonably be inferred that a comparatively small proportion of the usurpers would voluntarily incur the trouble and expense of applying for an *ex post facto* legalization, even if there were no risk of a refusal. And that such usurpation

(*u*) Edmonton; *Vicar-General's Books*, Vol. X. fol. lxxxiii.

(*x*) Enfield; *Ibid.* Vol. XI. fol. xlv.

(*y*) Little Baddow; *Ibid.* Vol. X. fols. lxxxvii and lxxxviii.

(*z*) Great Baddow; *Ibid.* Vol. XI. fol. lxxxv.

(*a*) St. Swithin, London Stone; *Ibid.* Vol. X. fol. cxxvii and Vol. XI. fol. lxxx.

(*b*) Theydon Gernon; *Ibid.* Vol. XII. fols. iii and xx.

was frequent appears amongst other evidence, from Bishop (then Archdeacon) Cosin's *East Riding Visitation Articles* in 1627 (c):—

BOOK I.
CH. VII.
Visitation
Articles.

Be there any new pews or seats erected in your Church, or Chancel, in places where none were before, or old altered, or taken away. By whom, and *by what authority?*

Then in Bishop Wren's *Visitation Articles* in 1636 (d):—

Hath any private man, or men, of his or their owne authority (for ought you know) erected any Pewes, or builded any new Seats in your church? And what Pewes or Seats have been of late yeares new built, by whose procurement, and by whose authority?

And still later by Bishop Burnet's *Visitation Articles* in 1692 (e):—

Is there any strife or contention among any of your Parish for their Pewes or Seats in your Church? Have any new Pews been erected in your chancel, or in the Body of your church or chappel, without leave from the Ordinary?

The separation of sexes, which is the greatest, if not the only bar to an appropriation of seats in countries where the churches are fitted with fixed seats throughout, was usual at the period, as appears in about one-half of the early cases of faculties, either in the grant itself or from references contained in it; and so also in the permission

Bar to appropriation.

(c) *East Riding Visitation Articles*, 1627; Cosin's Works, *Library of Anglo-Catholic Theology*, Vol. II. p. 3.

(d) Bishop Wren's *Normwich Visitation Articles*, 1636, Cap. III. sec. 12.

(e) Bishop Burnet's *Sarum Visitation Articles*, 1692, Tit. IV. sec. 12.

BOOK I.
CH. VII.

Bar to appro-
priation.

Faculty to
prevent appro-
priation.

purporting to be accorded by the Aldgate vestry in 1587 (*f*); more than once the application for a faculty was made professedly on the ground of inconveniences arising from promiscuous occupation of seats.

The system of faculties as affecting church seats has been lately, as it were, turned against itself. One was issued by the Bishop of Lichfield in 1870 (*g*), reciting a representation made on behalf of the Vicar and Wardens of Wirksworth, Derbyshire, in that diocese, based upon a resolution of vestry, desiring that "all sittings, of whatever kind, now in the church, or to be placed therein, consequent upon the restoration thereof, should be wholly free and unappropriated;" and granting a licence or faculty in accordance with the petition.

(*f*) Aldgate, *Parish Clerk's Book*, 1587.

(*g*) *Church of the People*, Sept. 1870.



CHAPTER VIII.

CHANTRY CHAPELS.



BOOK I.
CH. VIII.

IT is a somewhat singular fact that until the date of the Reformation no ancient pews are discovered in the localities where, especially, one would look for them—viz., in chantries, or private chapels, forming part of parish churches, and commonly built as an addition to the church, by the founder of the church, or some other great person, for the exclusive use of his family for the purpose of worship and burial; and notwithstanding that a very large number of such chantries or chapels remain as private property to this day. Here the earliest pews might be expected to have been erected, and here they would be most likely to remain uninjured, especially as the wealth of the owners would have caused them to be richly wrought and of the most substantial workmanship. And yet such is not the case. Instances of such an arrangement may indeed be found, and those not of seats in a private chapel, but in a public chapel; as in the parish accounts of St. Michael, Cornhill:—

1474 (a). Payde for makynge of the <i>puys</i> in	
oure Lady Chappell . . .	xiiij ^s
1559 (b). Paide for mendinge of a Pewe in	
the Chappell of o ^r Ladie . . .	xvj ^d

Lady chapel.

(a) *Cornhill Accounts*, p. 55; also *Archæological Association Journal*, Vol. XXIII. p. 325.

(b) *Ibid.* p. 147.

BOOK I.
CH. VIII.
Lady chapel.

1520. In the Will of Gyffray Gough, Yeoman of the Guard (*c*), he directs—

my body to be buried in erth at my *pew* dore within
our Lady Chapell of my parish church of Mary
Magdalen (St. Mary Overy) aforesaid.

Pews in chan-
tries after date
of Reforma-
tion.

At the time of the Reformation, under the plea of
superstitious uses, the revenues of chantries were seized by
the crown; and partly on that account, and partly on
account of the change in religious sentiment, they ceased
to serve their original purpose; it was therefore to be ex-
pected that they would be in many instances added to the
area of the church as available for the parishioners gene-
rally. This is clearly seen in the Ludlow accounts (*d*):—

1549. Rec. of Thomas Beadow wif for a <i>pew rowme</i> wher Bewpie's chancell was	xviij ^d
Item, rec. of John Newton for the <i>grounde</i> that his <i>pew</i> standes on, wher Cooke's chancell was	xvj ^d
Item, rec. of hym for tymber to make the <i>pew</i>	ij ^s
1550. Payd to John Lyngam for iiij days worke after viij ^d a day for movinge the pilpett and makynge <i>seetes</i> by the Trynitye chancell	ij ^s iiij ^d
Item, payd to his ij men for iiij dayes workyn ther	iiij ^s
Item, paid to William Gers & Roger	

(*c*) Formerly in the church chest at Kingston, Surrey; *Surrey Archaeological Collections*, Vol. I. p. 184.

(*d*) *Ludlow Churchwardens' Accounts*, Camden Society, Vol. CII. p. 40 *et seq.*

Swyft for makynge of the *pewis* by
the rode chauncelle for vj dais
after vij^d the day. . . .

vij^s

BOOK I.
CH. VIII.

These are followed by a large number of allotments, all at a very remunerative profit for the moment.

Such chantries were occasionally termed closets, evidently from the screen, or *parclose*, with which the chantry was closed in. The following examples of this use of the term “closet” will suffice:—

Chantries
called closets.

1479. The will of Janet Caudell, widow (*e*), directs—

To be beried within the *closett* of Seynt Anne, in my parisshe church of Seint Sampson in the Citee of York.

1491. The will of Anne Beverley, Widow and Vowess (*f*), directs her burial—

in ecclesiâ Omnium Sanctorum super Pavimentum, in quodam clauso, vocato ibidem *a closett*, ubi corpus mariti mei requiescit.

1554. The Chantry Rolls (*g*) mention—

The *Closet* of Saynt Nycholas called Trafforde Chapell w^{thin} the poche Church biforsaid (Manchester).

1571. John Talbot, of Thornton-le-Street, Yorks (*h*), by his will, directs—

my bodye to be buried w^{thin} the p^{rshe} church of thorneton in the strett, in the *closyd*, or *pew*, whⁱⁿ I use to sitt.

(*e*) *Cornhill Accounts*, p. 147.

(*f*) *Testamenta Eboracensia*, Surtees Society, Vol. III. p. 197, n.

(*g*) *History of the Chantries*, Chetham Society, Vol. LIX. p. 32.

(*h*) Surtees Society, *Wills and Inventories*, p. 369.

BOOK I.
CH. VIII.

Pews called
closets.

1577. The will of Christopher Wivell, of Burton Constable, Yorks, Esquire (*i*), directs—

my bodye to be buried in my *closed* within y^e parish church of Massam in y^e said countie of York, if yt shall happen me to dye either within y^e said parish of Massam or parishe of Fyngall within y^e said countie of York.

1638–62. Bishop Wren's *Visitation Articles for Norwich* in 1638, and *Ely* in 1662 (*k*), inquire—

Are there any privy *closets*, or *close pewes*, in your church?

Even at the present day the Royal apartment in the chapels of the Queen's palaces is termed "a closet."

(*i*) *Richmondshire Wills and Inventories*, Surtees Society, p. 270.

(*k*) Bishop Wren's *Norwich Visitation Articles*, Cap. III. sec. 13; and *Ely*, Cap. III. sec. 16.



CHAPTER IX.

SEPARATION OF SEXES, AND GENERAL OCCUPANCY.



BOOK I.
CH. IX.

THE following examples of occupancy, beginning at an early date (and taken, as they came, without selection—except so far as to avoid repeating extracts given in the earlier part of this work), probably at first refer to a mere occupancy of habit; most are for seats for women, as in the cases of Assheton-under-Lyne, Ludlow, St. Margaret Westminster, and St. Michael Friday Street; and some, certainly, and some others probably, refer to private chapels.

And here it may be desirable to advert to the system of separation of sexes in public worship. It is a system which descends from very high antiquity (*a*). Eusebius says that it is as ancient as the time of Philo Judeus, and St. Mark; and many learned men think it came from the Jewish Church into the Christian, not long after the days of the apostles; the author of the *Apostolic Constitutions* says, “Let the doorkeepers stand at the gate of the men and the deaconesses at the gate of the women.” St. Cyril refers to it as customary at his own church at Jerusalem. S. Augustine the Great intimates that each sex had its distinct place. Paulinus, in his *Life of St. Ambrose*,

Early seats for women.

Separation of sexes very ancient.

(*a*) Bingham's *Christian Antiquities* (Ed. 1840), Vol. II. p. 411.

BOOK I.
CH. IX.

Empress and
Emperor.

tells how that saint was once furiously assaulted in a church by an Arian woman, who, getting up into the tribune to him, tried to hale him by his garments to the women's part, that they might have beat him. The distinction was so generally observed in the time of Constantine, that, as Socrates says, the Empress Helena always submitted to the discipline of the church, and prayed with the women in the women's part of the church. And, in like manner, the Emperor Theodosius (*b*), when rebuked by St. Ambrose for sitting within the sanctuary, afterwards took up his place outside the rails, in the men's apartment, and the empress had her seat in the upper part of the women's apartment.

Durandus.

Durandus, whose work upon the symbolism of churches was written, according to Martene, before the year 1295, refers to the subject, thus (*c*):—

In church, men and women sit apart; which, according to Bede, we have received from the custom of the ancients. * * But the men remain on the southern, the women on the northern side: to signify that the Saints who be most advanced in holiness should stand against the greater temptations of the world; and they who be less advanced, against the less: or that the bolder and the stronger sex should take their place in the position fittest for action. * * But, according to others, the men are to be in the fore part (*i.e.*, eastward), the women behind; because the husband is the head of the wife, and therefore should go before her.

(*b*) Bingham's *Christian Antiquities*, Vol. II. p. 419.

(*c*) Durandus on the *Symbolism of Churches*, Cap. I. sec. 46; translation by Neale and Webbs, p. 36.

It is unnecessary here to furnish a catena of authorities proving the practice of separation of sexes, but those who desire can refer to a very valuable article in the *Ecclesiologist* for 1868 (*d*). Nor need we show the continuance of the practice, which seems in fact never to have been abandoned from the earliest period of Christianity down to the present day.

BOOK I.
CH. IX.

Antiquity of
separation of
sexes.

We will now proceed with illustrations of occupancy, which, as was observed, mostly relate to women.

An early instance occurs in the *Cornhill Accounts* (*e*):—

1473. For werkmanship & nayle for ij
 women pewes ij^s vj^d .

1483. John Bocking (*f*), Master of the Grammer Rotherham. School at Rotherham, by his Will desires to be buried in the south chancel of Rotherham Church, near the *stall* in which the wife of Richard Lylle, Bailiff of Rotherham, and his (the testator's) wife sit.

1516. Christopher Marshall, Clerk, in his Will (*g*), St. Martin's. which is chiefly in Latin, continues, in English, thus:—

Be it knowen to my speciall and singuler frendes
S^c Wylliam Sore, Vicarye of Saynt martyns
nygh the Charyng crosse, and to John Thatcher,
of the prysshe of Kensyngton, that all my money,
wheche I have above my detts payd, lyeth in the
pew or sete wheras Mais^r Johⁿ Meawts custumably
knelith, or sittith, in the Churche of Kensyngton
(under the second bord upon the which he knelith,
under that end of the bord toward the quer^t, of the

(*d*) *The Ecclesiologist*, 1868, p. 100.

(*e*) *Cornhill Accounts*, p. 50.

(*f*) *Testamenta Eboracensia*, Vol. IV. p. 141, note.

(*g*) *Commissary Court of London*, 1514, Vol. XX. fol. xvii.

BOOK I. CH. IX.	which forseid money I will that the said Sr Willm̃ and John Thatcher, coniunctly, have the disposiçon a cordyng to my last will.
St. Peter Chepe.	1529. In the accounts of the parish of St. Peter Chepe (<i>h</i>), is a charge in reference to a pew door.
	1548. Brian Appulby (<i>i</i>), by his will directs his burial— in the parysch church of God and Sanct Rumald, in such place as I have <i>comonly used to seyt</i> in the tymes of Divine Services.
Sir Thomas More.	Sir Thomas More (<i>k</i>) says— Now shal ye se men fall at varyance for kissing of the pax, or goyng before in procession, or setting of their <i>wives pewes</i> in the church.
Friday Street.	1550. St. Matthew, Friday Street (<i>l</i>). Paid for the bowrdyng of the goodmā mabes <i>wyve's pewe</i> & the goodmā madcallfe's <i>wyffes pewe</i> ii ^s iiiij ^d
	1559. John Tristrame (<i>m</i>), of Myddilton Tyas, Yorks, by his Will directs—
Myddilton.	my bodey to be bureyed in Myddilton Chyrche, in the place <i>wher I hussted to seyt</i> .
Redeborne.	1559. Sir Richard Rede (<i>n</i>), of Redeborne, Herts,

(*h*) *Archæological Association Journal*, Vol. XXIV. p. 255.

(*i*) *Richmondshire Wills and Inventories*, Surtees Society, Vol. XXVI. p. 68.

(*k*) Sir Thomas More's Works, published 1557; 88, c.

(*l*) *Churchwarden's Accounts*; Article by Rev. Sparrow Simpson, F.S.A., in *Archæological Association Journal*, Vol. XXV. p. 262.

(*m*) *Richmondshire Wills and Inventories*, p. 142.

(*n*) Prerogative Registry, 20, *Carew*.

knight, in giving directions by his Will for his burial, directs—

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CH. IX.

a vawte to be made for that purpose neare to *my Seates* there after a decent and convenient order according to the discretion of myne Executors.

He afterwards leaves 20s. per annum to the Churchwardens to be employed in “the repairs of the aisle of the said Church, *where my seats be.*”

1560. Dionyse Leveson, widow (*o*), by her Will directs her burial in the church of St. Andrew Undershaft, London—

St. Andrew
Undershaft.

in the middle Ile of the same Church, at the ende of the *pue* that I comonly use to kneell in.

1563. Richard Lee (*p*), of Lee, Cheshire, directs his burial—

in the pishe church of Wybūbury amongst my auncesters att my *wyves forme end.*

1565. Richard Hedworthe (*q*), of Whickham, by his Will directs his burial—

nyghe unto *myne owen stall.*

1569. In the Return of the state of the Diocese of Chichester (*r*), made by Henry Barcley, custos spiritualitatis (sede vacante) says—

Chichester.
Diocese.

In the churches they have set crosses upon their stools whom they favour not, & upon my *farmer's stool* they have chalked up a gibbet.

(*o*) Prerogative Registry, 60, *Mellersh.*

(*p*) *Lancashire and Cheshire Wills*, Chetham Society, Vol. LI. p. 40.

(*q*) *Surtees Society, Wills and Inventories*, Vol. I. p. 227.

(*r*) *State Papers*, Vol. LX., Eliz., No. 71, quoted in *Church Review*, 14th July, 1866.

- BOOK I.
CH. IX.
Cattellie. 1582. Robert Clavering (*s*), of Cattellie, Northumberland, Esquire, by his will directs his burial—
within my parish church of Whittinghame, upon the southe side of the quear, next the wall, before *my wive's seat*.
- Friday Street. 1584. St. Matthew, Friday Street, London (*t*), in the churchwardens' accounts :—
P'd for mendinge certeyn *women's pews* . . . ij^s
1586. In same :—
I'm for a hynge to one of y^e *women's pews* . . . iiij^d
- Kirke Merington. 1586. Elizabeth Kirkhouse (*u*), by her will, desires her body to be buried in the church of Kirke Merington—
at myne owen stalle end.
- Matrons and young women. We may also refer to a further distinction made in the sixteenth and seventeenth centuries by the separation of the young women from the matrons, showing conclusively an altogether different tone of mind from that which tends to form a congregation by an aggregation of families. The wives of the most eminent parishioners were placed in the more dignified positions, while the unmarried women were placed collectively elsewhere. A few instances of this arrangement, in addition to some of the foregoing, will suffice to exhibit more prominently the separation of sexes :—
- Maiden's pew. 1527. In the accounts of St. Mary-at-Hill (*x*) is a charge for workmanship of Mr. Rocke's *maiden's pew*.

(*s*) *Durham Wills and Inventories*, Vol. II. (Surtees Society), p. 40.

(*t*) *Archæological Association Journal*, Vol. XXV. p. 262.

(*u*) *Durham Wills and Inventories*, Vol. II. (Surtees Society), p. 56.

(*x*) *Nichols' Illustrations*, p. 108.

But Mr. Rocke, or Rokes, was a great man, having before that date been city chamberlain and sheriff, and he afterwards became alderman, lord mayor and knight.

BOOK I.
CH. IX.

Women's
pews.

So at St. Mary Woolchurch, London (*y*):—

1539 & 1540. Paid for mendyng of ij pewes
in the chirche, that ys to say, the good-
wyf Hawkyns pewe and the goodwyf
Robsons pewe ij^d

1541 & 1542. Paid for mending the may-
dens pewe in the church ij^s

1542 & 1543. Paid for making of the mens
pewes on the southe side of the Church,
and a pew under Saint George's Cha-
pell, that ys to say (for iiij long poū-
cheons, ij great quarters, iiij^{xx} ij fote of
borde, and for nayles v^s vj^d) and to a
workman and his boye for xij days
workmanship xij^s—Sū. xvij^s vj^d

1543 & 1544. To a briklayer to underpynne
the mens pewes in the southe Jle and
other w^t his laborar xiiij^d

1549. All Hallows, Bread Street (*z*), London:—
Paid for translating of the *maiden's*
pews iiij^s

Maiden's pews.

At St. Mary Woolchurch (*a*):—

1558 & 1559. Paid to a Smitthe for cuttynge
a barre of yron and makynge it fyttē for
the maydens pewe at the northe dore,
and nailles xij^d

(*y*) St. Mary Woolchurch, Churchwardens' Accounts (unpublished).

(*z*) *Inventories of Church Goods*, printed in the *Church Review*, 21st October, 1865.

(*a*) St. Mary Woolchurch, Churchwardens' Accounts.

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CH. IX.

Maiden's pews.

Paid to a mason for cuttynge a holle in
the churche wall and fastenyng the
said barre of yron vj^d

1579. Gateshead, Durham (*b*):—

The Office of the Judge was promoted against Janet
Foggard—

That she beinge a yonge woman unmarried will not
sit in the stall wher she is appointed, but in a stall
letten to another.

1601. St. Mary, Colechurch (*c*), London:—

Mr Hampton, housholder, was buried the 23 day of
October 1601: he lieth under the *maides' loft*,
where they sitt.

1617. Contra Hayward, puellam (*d*):—

Pres^r, that she beinge a yonge mayde *sat in the pewe
with her mother*, to the greate offence of many
reverent women; howbeit that after I, Peter Lewis,
the vicar, had in the church privatlie admonished
the said yonge mayde of her fault, and advised her
to sitt at her mother's pewe dore, she obeyed; but
nowe she sitts againe with her mother.

Gentlewomen
at Durham
cathedral.

1620–30. Durham Cathedral (*e*):—

In the North Alley of the Choir, is the tomb of
Bishop Skirlaw having been removed to before the
High Altar, and “a stall or pewe placed their for
gentlewomen to sitt in.”

It is believed that pews are still thus appropriated to

(*b*) *Injunctions and Ecclesiastical Proceedings of Bishop Barnes*,
Surtees Society, Vol. XXII. p. 124.

(*c*) St. Mary, Colechurch, Parish Register (unpublished).

(*d*) Archdeacon Hale's *Proceedings in Diocese of London*, p. 242.

(*e*) *Cosin MSS.*, Surtees Society, Vol. XV. p. 16.

unmarried women in a large number of country churches, down to the present day.

BOOK I.
CH. IX.

There are also other indications of the separation of sexes, beside the numerous instances occurring in previous extracts, beginning with *Piers Plowman's Vision*, where Wrath saith "among wyves and wodews;" and where that system prevails there can scarcely be a permanent appropriation.

The Rubric to the Communion Service in King Edward the Sixth's *Prayer Book*, published in 1549, directs (*f*):—

Rubric of
1549.

Then so manye as shalbe partakers of the holy Communion, shall tary still in the quire (*i.e.*, after having gone up to give at the Offertory to the Poore Mennes boxe, or due and accustomed offerings to the Curate) or in some convenient place nigh to the quire, the men on the one side, and the women on the other syde.

Among other examples these will suffice:—

Cornhill.

1550. St. Michael's, Cornhill (*g*), accounts mention Mr. Stanfyld's *mayd's dore*, and Mr. Hunt's *mady's pewe dore*, &c.

1551. Richard Bewe, Citizen and Skinner of London, Aldermary, by his Will (*h*) directs—

my bodye to be buried by the *men's pews*, being withoute y^e Chappell of our lady in the Church of our lady Aldermary within the Citie of London where I am a pisshener."

(*f*) Pickering's fac-simile reprint (1844), fol. ciii.

(*g*) *Cornhill Churchwardens' Accounts*, pp. 82 and 83; *Archæological Association Journal*, Vol. XXIII. p. 325.

(*h*) Prerogative Registry, 12, *Powell*.

BOOK I.
CH. IX.

c. 1551. St. Faith, London (*i*):—

Payment for a half dozen hinges for the
women's pews 10^s

St. Peter
Chepe.

In 1572 the Lord Mayor and Lady Mayoress' pews, at St. Peter Chepe, were separate (*k*).

The Faculties for seats, previously referred to in detail, also afford evidence of the general custom of separation of sexes at the end of the sixteenth and early part of the seventeenth centuries.

1584-5. St. Matthew, Friday Street (*l*):—

P'd for mendinge *certyn women's pews* ij^s

1586-7:—

I'm for a heinge to *one of y^e women's pews* iij^d

Separation
shown in
Faculties.

In one of the early Faculties for leave to build seats for the individual's own use (at Great Burstead, Essex, in 1611), there was assigned (*m*), with consent of Lord Petre the Appropriator, a space of 8 ft. by 3 ft. between the nave and chancel (but evidently, at least in part, within the chancel) to the applicant—

pro semetipso et familia tua, seu consorti, vel amico
tuo, masculini sexus, in usum predictum.

And with consent of the churchwardens a seat on the north side of the church 9 ft. by 3 ft. for the applicant's wife and family, and companions and friends of the female sex.

Colechurch
vestry.

1613. The vestry of the united parish of SS. Mildred

(*i*) Inventories of Church Goods, *Church Review*, 21 Oct. 1865.

(*k*) *Archæological Association Journal*, Vol. XXIV. p. 255.

(*l*) Parish Accounts, *Archæological Association Journal*, Vol. XXV. p. 262.

(*m*) *Vicar-General's Books*, Vol. XI. fol. xxxiii.

and Mary Colechurch passed a resolution(*n*) for the allotment of seats to be made at Easter, Christmas, Whitsuntide and Michaelmas, the men on one side and the women on the other.

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CH. IX.

For the church of Earle's Colne a decree(*o*), directed to the vicar and churchwardens, was issued by the Chancellor of the Bishop's Court in 1617, in which, after reciting that a complaint had been made of abuse about the removing of certain persons from their seats, and that a report had been made, after hearing all parties, by Dr. Sames, sent down for the purpose by the Chancellor, it was with the consent of the churchwardens and the majority of the parishioners ordered: That the men who sat in the 1st and last seats on the north side should be removed to the south among the seats which men only do use. That the women placed by the wardens in the 2nd and 3rd seats on the north side should be placed in the 1st and 2nd, the men's daughters in the 3rd and 4th on the same side, and the rest of the women removed downwards one seat. That the churchwardens should place Mr. Church's daughters (when God should send them him), in the said 3rd seat, and in the mean time the daughters of the late Dr. Church, and as many other of the chief men's daughters as may conveniently sit there.

Earle's Colne
Faculty.

At S. Alphege, Cripplegate Within(*p*), in 1620, Cripplegate. Mr. Loveday was reported (? presented) for sitting in the same pew with his wife; "which being held to be highly indecent" he was ordered to appear; but, failing

(*n*) St. Mildred and S. Mary Colechurch, London, Vestry Minutes (unpublished).

(*o*) *Vicar-General's Books*, Vol. XI. fol. xxxviii.

(*p*) *History of Pwes*, p. 35.

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to do so, "Mr. Chancellor was made acquainted" with his obstinacy. The matter was finally compromised by the Rector giving him a seat in his pew.

1625. The Bishop of Rochester (*q*) writes—

For my owne p̃ticular opinion I doe not thinke it fitt
that men and women should be placed in the same
seats.

Bishop Wren.

Bishop Wren, in 1636, inquires in his *Visitation Articles* (*r*)—

Are all the Pewes and Seats in the church so ordered
that they which are in them may also conveniently
kneele downe in the time of prayer, and have
their faces up East-ward, toward the Holy Table;
and also that men and women do not sit promiscuously together?

Bishop
Mountagu.

Bishop Mountagu, in 1638, inquires in like manner (*s*):—

Do men and women sit together in those seats indifferently and promiscuously? or (as the fashion was of old) do men sit together upon one side of the church, and women upon the other?

Bishop Wren.

And again, in the Articles of Enquiry at Bishop Wren's Ely Visitation, in 1662, after the Restoration (*t*), he asks,—

Are all the Pewes and Seates so ordered * * *
that men and women do not sit promiscuously together?

(*q*) *Archæologia*, Vol. XII. p. 103.

(*r*) Bishop Wren's *Ely Visitation Articles*, 1636, Cap. III. sec. 12.

(*s*) Bishop Mountagu's *Normich Visitation Articles*, 1638; rep. Camb. 1841, p. 43.

(*t*) Bishop Wren's *Ely Visitation Articles*, Cap. III. sec. 15.

The custom survived in many churches in the north of England, especially in the larger towns, till a comparatively recent date(*u*); and very probably continued to exist in some secluded parishes until revived in the modern arrangements of various churches; and in many other places, where the practice had fallen into desuetude, traces of it remained.

Much the same is the case on the Continent, and probably most of our readers have witnessed, at such churches as the Madeleine or the cathedral of Nôtre Dame at Paris, the separation by a grim and dignified Suisse of some pair of British tourists innocently wandering arm-in-arm down the aisle.

(*u*) *Richmondshire Wills and Inventories*, Camden Society, p. 232, in note by the Rev. Edward James Raine, the editor.

CHAPTER X.

CORPORATION AND SPECIAL PEWS; PAYMENT AND LOCKS.

BOOK I.
CH. X.Corporation-
pews.

ANOTHER class of appropriations was to particular sections of the parishioners, such as the Corporation-pews in town churches, which may fairly be deemed admissible—the corporation representing the ruler to whom we are enjoined to offer respect, as, indeed, has been done by the Church in all ages.

Mayor's pew.

The Lord Mayor, Lady Mayoress and Aldermen came in for a share of honour as at St. Michael, Cornhill, where, in 1474 (*a*), is a charge for “translatyng of the Meyres pue;” and in the following examples.

Alderman's
pew: Friday
Street.

At St. Matthew, Friday Street, in 1549-50 we find a considerable sum laid out on the pew of Mr. Alderman Dobbes, who it appears bought some of the tabernacles and other effects from the church in 1547-8 (*b*) for four shillings and sixpence (very cheap), and also a vestment for twenty shillings. The account (*c*) of the parish outlay

(*a*) *St. Michael, Cornhill, Accounts*, p. 55; also previously published in the *Archæological Association Journal*, Vol. XXIII. p. 325.

(*b*) Article by the Rev. Sparrow Simpson on the Parish Accounts, *Archæological Association Journal*, Vol. XXV. p. 365.

(*c*) *Ibid.* p. 262. The total expense amounts to £6 : 2s : 9d., which, at a moderate estimate, may be set down as equivalent to £100 of the present value of money, expended by the parish upon Mr. Alderman Dobbes' pew.

is well worth transcribing :—

BOOK I.
CH. X.

1549-50. Paid to the joyner for making and mēding of M ^r Dobbes pew, & his wyffe	iiij li x ^s viij ^d	Alderman's pew: Friday Street.
Paid for xij y ^{ds} of saye for M ^r Dobbes pewe at xij ^d the y rd .	xij ^s j ^d	
Paid more for xij pieces of Rybaynge ffor his pew	s ^m v ^s	
Paid more for vj li of flox for the same	s ^m ij ^s	
Paid for v ^m of nailes for his pewe .	vij ^s	
Paid for the workmanship of his pewe	v ^s	

And at All Hallows, Bread Street, London (*d*), in the 3rd year of King Edward VI., was paid for trimming Alderman Wise's Pew, 22^s 8^d. Bread Street.

1566-7. St. Peter Chepe, parish accounts (*e*):

For a hynge for M ^r Alderman Avenon's pew dore & for mendyng M ^r Alderman Ducket's pewe doore	xii ^d
Paid a free mason for mendyng a cracke of M ^r Ducket's pewe, and in the maids loft	iiiij ^s

At St. Michael, Cornhill, a trifling charge was permitted at first with a very guarded proviso against similar payments in future, but the caution was forgotten three years later (*f*):

1566. Iīm pd to Thomas Duche for tryming
of M^r Aldermans pewe and his

(*d*) Inventories of Church Goods, *Church Review*, 21st October, 1865.

(*e*) *Archæological Association Journal*, Vol. XXIV. pp. 255-6.

(*f*) *Cornhill Accounts*, pp. 160 and 164.

BOOK I.
CH. X.

Lady
Mayoress' pew.

wyfe's pewe by a consent of vestry,
not as a president but of bene-
volence

j^s

1569. Iſm for makinge M^r Alderman a
newe pewe and for a locke thereto
Iſm paide for ij bouldsters for the
seates of M^r Aldermans pewe .
Iſm paid for the dressinge of M^r
Alderman's pewe

xxviij^s

v^s viij^d

iiij^s

1572. Payde for payntinge over my lady
mayres' pewe

x^s

Payde for a pece of sayes for my
lorde mayre's & my ladyes' pewes

xl^s

Payde for lattyn naylls & blacke
nayles for my lord mayre's pewe,
& my ladyes'

vij^d

Payde fer lace for them Twoo pewes

iiij^s

Payde to a plasterer for whitinge over
my ladye mayres' pew

xx^d

Payde to the joyner for the settill, &
for my lorde mayre's pewe

iiij li x^s iiij^d

Payde for xij^{li} of flax to make ij set-
tills for my lorde maior's, & my
ladye mayres', pewe at iiij^d ob.

iiij^s

Payde for two elles & a halfe of can-
vas to make the same seates at viij^d
the elle

xx^d

Payde to an upholster for trymminge
the same pews with sayes & lace
& makinge the seates

x^s

Cornhill.

St. Michael, Cornhill (*g*):—

1575. Paide for x yardes of Cornisshe mattes
for my Ladyes pewe, wth nayles
& workmanshipp

iiij^s vj^d

At St. Peter Chepe, again (*h*):

BOOK I.
CH. X.

St. Peter
Chepe.

1590. Item payde to the joyner for makinge
a newe pewe for my lorde maior on
the Southe side & est ende of the
churche xxx^s

Item paid unto him for dyvers newe
sheildes & arrowes & other amende-
ments about the greene men, & at
the Southe churche doore & else-
where aboute the churche, & vij
daies woorke of his man . . . xxvij^s

Item paid for wier to binde the ar-
rowes & ye clubbes of the greene
men ij^d

(The green men are supposed to have been part of the
heraldic bearings of the Lord Mayor.)

1594. Paid for matts & hassocks for my
Lord & my ladie's Pewes . . . v^s vi^d

The deputy of the ward received a somewhat similar
consideration at the hands of the parish of Aldgate, as
appears from entries in the Churchwardens' Accounts (*i*),
for example :—

1571. Paid for a new foote pace & a new Deputy of
seate to m^r. Deputy's pew . . . j^s iv^d ward.

And in 1604, four keys were made for the Burges' pews in Burgessess.
the church of St. Margaret, Westminster (*k*).

The fact of all these repairs being done by the parish
shows that there was no prescriptive title to the pews.

As other examples there may be mentioned the bedes-

(*h*) *Archæological Association Journal*, Vol. XXIV. p. 256.

(*i*) St. Botolph, Aldgate, Churchwardens' Accounts.

(*k*) Nichols' *Illustrations*, p. 27.

BOOK I.
CH. X.

Bedesmen, and
others.

Church-
wardens.

men's pew at All Hallows, Bread Street (*l*); at St. Botolph, Aldgate, 1552, "the pewe where they sette that gayther for the poure" (*m*), and the like at Westminster, 1559 (*n*); and at St. John Zachary in 1597 (*o*); and in 1600 the churchwardens' pew at the latter church was supplied with two keys (*p*); and the pew belonging to the officials at Westminster is thus mentioned (*n*):—

1610. Paid to Goodwyfe Wells for salt to
destroy the fleas in the Church-
wardens' pew 6^d

Parish officers. In 1612, this resolution was passed by the vestry of St. Mary Colechurch (*q*):—

That all offices in the pishe, as Churchwarden, Counstable, wormoth, inquest, scavenger, Colector, for the poore, for the fyftene sydmen, & such like shalbe appoynted accordinge to the sittings in the Church, begynninge at the highest and descendinge to the lowest.

Midwives. In 1617 at St. Margaret, Westminster, there was paid for making a new pew for the midwives, £2:5s. 0d., and also a further charge for making another new pew for Hall-Dog Pew. the midwives adjoining the former (*r*). And this system was carried so far that till about fifty years ago there was in Northorpe Church (*s*), Lincolnshire, a small pew, known

(*l*) Inventories of Church Goods, *Church Review*, 21st October, 1865.

(*m*) St. Botolph, Aldgate, Churchwardens' Accounts.

(*n*) Nichols' *Illustrations*, pp. 15 and 29.

(*o*) St. John Zachary, London, Churchwardens' Accounts, unpublished.

(*p*) *Ibid*.

(*q*) St. Mary Colechurch, Churchwardens' Accounts, unpublished.

(*r*) Nichols' *Illustrations*, p. 41.

(*s*) Note by Mr. Peacock in Paper on Leverton Parish Accounts, *Archæologia*, Vol. XLI. p. 366.

as the Hall-Dog Pew, in which the dogs, which followed the residents at the hall to church, were placed during Divine Service.

BOOK I.
CH. X.

We must now refer to the payment of rent in consideration of the appropriation of specific seats to individuals. Rent.

Up to the middle of the sixteenth century there does not appear to have been a charge of rent or money payment other than in the case of St. Margaret's, Westminster. At St. Michael's, Cornhill, although pews appear so early in the parish accounts, there are no receipts on account of them: the entries of gatherings for the pews, up to the year 1554-5, we have already commented upon and explained; from which date until 1558-9 there occur the following entries (*t*):—

1555. Receiptes for a forme . . .	ij ^s
Gathered in the Church for the Pewes for the hole yere	v ^{li} v ^s iiij ^d
Soñ total of all the res. of all the rentes, the rest remayne- inge of the pattente with the gatheringe of the pewes in the Church and the money in the boxe with such thinges as are solde amountynge to the some of	xxxvij ^{li} iij ^s x ^d
1556. Gatherede in Church for the pewes on holl yeare . . .	v ^{li} xix ^s vij ^d
1557. Sm ^a of the rentes of the graves, the pewes and the rest of the patten coms to, the on with the other	xliij ^{li} x ^s vij ^d

(*t*) *Cornhill Accounts*, pp. 118, 126, 127, 132, 134, 140.

BOOK I. CH. X.	Res. for the pewes in the Churche for oñ hoolle yeare	v ^{li} viij ^s vi ^d
Cornhill gatherings.	1558. Res. for the pewes in the Cherche for the half yere eandinge att Mihelmas last paste	liij ^s vij ^d
	1559. Res. for the pewes in the Cherche for oñ holle yeare	v ^{li}

These entries are here extracted at full length, because it has been assumed that they prove the existence of regular pew rents at that date; and it is therefore necessary to consider how far they bear out that assumption.

As regards the first item, the payment for a form, it seems likely that in the change of arrangements in the Church (of which the accounts give abundant proof), this form was dispensed with and was one of those things sold which are referred to in a subsequent item in the accounts.

As regards the other items it will be observed that the expression at first used is "Gathered in the Churche for the Pewes," and afterwards "Res. for the pewes in the Cherche." The first expression would certainly indicate a collection, not an absolute rent: and the same inference arises from the form in which the total receipts is expressed—"Soñ totall of all the res. of all the rentes, the rest remayneinge of the pattente with the gatheringe of the pewes in the Churche and the money in the boxe, with such thinges as are sold." The presumption that this was no fixed rent but a voluntary gathering is confirmed by looking back to the earlier accounts, where we find that there was in 1475 what was called the "Churche Aley bagge," which contained a considerable sum of money.

It may be laid down as an axiom that people will not voluntarily tax themselves to any greater amount than need actually requires, and certainly not to an extent considerably beyond any prospective requirement; while, when almsgiving is taught as a duty, people give freely as a duty. That the Church Aleÿ Bagge was thus rich appears clearly from the items referring to it:—

BOOK I.
CH. X.
Church Aleÿ
Bag.

1475 (u). Receyved owte of the Church Aleÿ
bagge ffor a peyre of new orgones
as hyt aperyth in y^e paymētes by
y^e wille of all y^e pyshons . . . ix li

Receyved owt of the seid Church
Aleÿ bagge ffor to bye new ledde
ffor the Crosse of Seynt Myelles
Stepull by the wille of alle y^e
pyshon^s as hyt aperyth in y^e pay-
mētes hereaft^r xx li

Receyved out of the seid Church
Aleÿ bagge ffor the carpēt that
made all the tymbur & warke of ye
Crosse that stondythe upon Seynte
Myelles Stepelle & othur as hyt
aperythe in the paymētes and by
ye will of all y^e seid pyshones . . . xvj li

Bale (v) (A.D. 1550) speaks of “churchstoles & pewes Bale. that are well payed for;” but this also may mean by voluntary payment: and there does not appear to have been any regular pew-renting until near the time of the Great Rebellion (x).

(u) *Cornhill Accounts*, pp. 52 and 56.

(v) Bale, *Image of both Churches*, B.b. Gloss. 12.

(x) It is, of course, not intended to be asserted that St. Margaret's, Westminster, is an absolutely unique example previous to that date, but none other has yet been met with by the author.

BOOK I.
CH. X.

Numbering
the pews.

Cornhill.

The numbering of the benches was a necessity for the purposes of appropriation or systematic allotment, whether for individuals, or for wives and unmarried women.

At St. Michael's, Cornhill, in 1555-6 (*y*), (*i. e.*, in Queen Mary's reign,) the churchwardens—

Paide for wrytinge on the pewe dores at my
Lorde of London's comaundemente . . . xii^d

And in 1568 they purchased “a booke for the pews” (*z*).

Whether my Lord of London was the Bishop or the Lord Mayor may be somewhat uncertain, but as the accounts for the same and the next following year (*a*) speak of “my Lorde of London at ffullam,” and in 1561, speak of my lord Bishop, there is every reason to believe that my Lord of London was the Bishop. Bonner filled the see at this date. No entry of any Order for writing upon the pew doors appears, either in the *Bishop's Books* or in the Records at Guildhall about that period. One would not have been surprised to find such an Order, whether made by the Bishop or the Lord Mayor, recorded in the *Bishop's Books*, for in them is, amongst other things, enrolled an order of a somewhat analogous nature (*b*), made by the Lord Mayor, Aldermen and Commons in Common Council assembled, about the same period, pronouncing penalties against persons who carried goods or led horses and other animals through St. Paul's Cathedral “unseemlye & unreventlye, the moore ys the pyttye.”

(*y*) *Cornhill Accounts*, p. 40; *Archæological Association Journal*, Vol. XXIII. p. 326.

(*z*) *Cornhill Accounts*, p. 162.

(*a*) *Cornhill Accounts*, pp. 128, 130, 135, 153.

(*b*) London Registry, Bishop's Books, *Bonner*, fol. cccciij.

At St. Matthew, Friday Street, London, the *Churchwardens' Accounts* show that the pews were numbered in 1569-70 (*c*):—

BOOK I.
CH. X.

Friday Street.

Paid for payntinge numbers uppon pewes vj^d
1570. M^m that uppon fryday beinge twelfte even, the
5 of Januarye 1570, hyt was agreyde that
the xvi women's pewes shoulde be nombrede
as hyt ys nowe sett uppon them; by these
men whose names are seen under wrytten.

Also at Cornhill in 1574 (*d*), there was:—

Cornhill.

Paide for the markinge of the pewes xij^d

At St. Peter Chepe there was paid in 1593 (*e*):—

St. Peter
Chepe.

for the nomb^ringe of all the pewes in the
churche ij^s

At Ludlow, notwithstanding the advantages the plan of numbering would have been in identifying the pews under the peculiar system of grants there in use, it is quite clear that the pews were not numbered until very long afterwards.

And at Leverton, Lincolnshire, there was paid in 1605 (*f*):—

for wittinge the order of placinge all th' in-
habitants in their stooles in the church viij^d

The specification of *all* the parishioners shows that there was no idea then of appropriating places to some and denying them to others.

(*c*) Extracts in *Archæological Association Journal*, Vol. XXV. p. 262.

(*d*) *Cornhill Accounts*, p. 170.

(*e*) Extracts in *Archæological Association Journal*, Vol. XXIV. p. 256.

(*f*) Extracts in *Archæologia*, Vol. XLI. Part 2, p. 368.

BOOK I.
CH. X.Spelman's
opinion.

Spelman, writing in 1641, refers to the sale, though not to the renting of pews (*g*). Referring to claims for payment for ground for burial places, a practice which he strongly reprobates (saying, *Vidi, puduitque videre*), and proves to be contrary to the antiquity of Christianity, he proceeds:—

I meddle not with the (Vestry) Constitutions of £4 to the Parson for a Pew in the Chancel, nor of 15s., 20s., £3, £3 10s. for *Places* and *Pews* in other Parts. But these and many others of the like sort fall in one Certificate (*i. e.*, of illegality).

Prestbury
Faculty.

At Prestbury, in Lancashire, the bishop, in the year 1671, granted a faculty to authorize the building of additional seats, and to constitute and appoint the vicar and wardens to make disposal of the seats, so built, as they should see most convenient. They entered a minute in the Vestry Book to the effect that they disposed of 2 pews on each side of the great doors, for the (4) churchwardens and their successors for ever; the adjoining pew to be annexed and remain to the houses in Prestbury belonging to Mr. George Newton, “he having payed the sume of twentie shillings for the same” (not dear at the price); and the remainder “we doe dispose for the publike use of the parish” (*h*).

Locks to pews.

When appropriation had become common, at least as regards the leading parishioners, it was before long found necessary to have door and locks in order to prevent intrusion.

St. Margaret
Pattens.

There is an early mention of one in the Churchwardens’

(*g*) Spelman, *De Sepultura*, ed. 1723, pp. 184—5.

(*h*) Prestbury Parish Books, unpublished.

Accounts of the parish of St. Margaret Pattens, London (*i*); where, in 1515, twopence is charged “for a Kaye for masster Waddall’s pew dowre.”

BOOK I.
CH. X.

In the church of St. Mary Woolchurch, the doors are spoken of in 1543 as no novelty (*k*):—

St. Mary
Woolchurch.

1543 & 1544. Paid for a payer of garnettes	
for m ^r . reynoldes pewe	vij ^d
Item paid to the carpenter for a day	
and a half abowt the same pewes	
Dores and Benchys	xij ^d

And at St. John Zachary, where the following items are extracted from the parish accounts (*l*):—

St. John
Zachary.

1594. ffor Hinges ƿ Naeies for M ^r . Grene’s	
pew door, ƿ for mendinge ij oth ³	
pewes	xij ^d
ffor hinges for a pewe doore ƿ 3 keyes	
ƿ one deale boord to laie under	
ffeeet	ij ^s iiij ^d
1597. Paid for a hindge for a peu	vj ^d
1600. Paied for ij paire of hinge and nailes	
for a pew dore belowe the founte .	ix ^d
Iīm paied for ij keyes for the Church-	
wardens’ pewe	xij ^d

Bishop Earle, in 1628, mentions it in the character of *The She precise Hypocrite* (*m*):—

She doubts of the Virgin Mary’s salvation, and dares

(*i*) St. Margaret Pattens, Churchwardens’ Accounts, extracts printed in *The Sacristy*, 1871, p. 259.

(*k*) St. Mary Woolchurch, Churchwardens’ Accounts.

(*l*) St. John Zachary, London, Churchwardens’ Accounts.

(*m*) *Book of Characters, from Overbury, Earle & Butler*, reprint, Edinb. 1865, p. 81.

BOOK I.
CH. X.

not saint her; but knows her own place in heaven as perfectly as the pew she has a key to.

Locks to pews.

Elvetham.

Though this illegal proceeding might pass unnoticed in many cases, it sometimes came within the purview of the Ordinary, as in the case of Elvetham, Hampshire. On the 21st May, 1631, Dr. Neile, Bishop of Winchester, issued a Monition upon this subject to the churchwardens of that parish (*n*):—

Whereas I am given to understand that lockes have been lately sett upon some pews in the parish church of Elvetham, and that, without any order from me or my Chauncellor, which I hould very unfitt to be indured. These are to will and require yow and every of yow, the Churchwardens there, to remove all the lockes upon any the pews within the said Church, betweene this and the feast day of Pentecost next insueing.”

Pepys.

Pepys, in 1661, seems to treat it as customary to keep the pews locked up, for he writes without surprise or irritation (*o*):—

Dec. 25. In the morning to church, where at the door of our pew I was fain to stay, because the sexton had not opened the door. A good sermon by Mr. Mills.

What, perhaps, will appear most strange to modern ideas, is that up to the beginning of the seventeenth century, there is no such thing as the suggestion of a family-pew.

(*n*) *Gentleman's Magazine*, 1865, p. 223; communication by Mr. Baigent.

(*o*) *Pepys' Diary*, Bohn's ed., Vol. I. p. 242.

Galleries were at first an effect, and afterwards a cause, of the continuance of the appropriation system. There can be little doubt that they owe their origin to a general allotment of pews, since that system required a larger extent of accommodation than was otherwise necessary; and the cheapest way of obtaining such additional space was by the erection of galleries, or, as they were then more frequently called, lofts or scaffolds. A very few notices of early galleries following the allotment of seats will suffice.

BOOK I.
CH. X.

Galleries or
scaffolds.

1546—52. Bletchingly, Surrey (*p*):—

Bletchingly.

Payd ffor nayles to repayre the scattes in
the churche and the scaffoldys . . . iiij^s iiij^d

Item payd ffor certain pollys that was oc-
cupied about the scaffold . . . v^d

1634. The Rev. Henry Bury, of Bury, Lancashire, by his will (*q*), leaves

twelve pounds to mak a loft with (needful stuffe being provided and brought to the place by the parish), in the lower end of Bury church, for people to sitt in, or betwen the church and the chancell wher the roode loft was woont to be.

Many dated galleries of this period still exist. Bishop Mountagu, in 1638, inquires (*r*):—

Bishop
Mountagu.

10. Is your church scaffolded any where, or in part?

(*p*) *Loseley MSS.*, edited by Kempe, p. 102.

(*q*) *Lancashire and Cheshire Wills and Inventories*, Chetham Society, Vol. III. p. 176.

(*r*) Bishop Mountagu's *Norwich Primary Visitation Articles*; reprint, Cambridge, 1841, pp. 42 and 43.

BOOK I.
CH. X.

Do those scaffolds, so made, annoy any man's seat, or hinder the lights of any windows in the Church?

Bishop Wren. And the inquiry of Bishop Wren, in 1662 (*s*), is very pertinent:—

What galleries, also, or scaffolds have you in your Church? How are they placed, and in what part of the Church? When were they built, and by what authority? Is not the Church large enough without them to receive all your parishioners? Is any part of the Church hidden or darkened therewith, or any of the Parishioners annoyed or offended by them?

Memento mori
pews.

Several examples occur in which, as that at Soest in Westphalia, previously mentioned, pews were carved with a *memento mori* inscription.

At Buxton, Norfolk, a pew, erected by the Vicar, bears the following (*t*):—

Mortis in Horâ animæ meæ parcat Deus, me viro
Dixi *Amen*. Sic exuviarum memor hæc posuit Ben-
jamins Griffin, Vicarius, Ætatis 33, Martii 18,
1688. Natus Felminham, eodem die, 1655.

He died 8th May, 1691.

In Little Bemingham Church, Norfolk (*u*), a pew was erected by a shepherd, in the nave, to afford accommodation for strangers and wedding parties; it bears, at the south-west angle, a skeleton carved in wood, (which pro-

(*s*) Bishop Wren's *Ely Visitation Articles*, 1662, Cap. III. sect. 16.

(*t*) Blomefield's *History of Norfolk*, 8vo. ed., Vol. VI. p. 444.

(*u*) *Ibid.* p. 317.

bably was not thought by the occupants particularly cheerful or appropriate,) with the inscription :—

BOOK I.
CH. X.

Wedding pew.

For Couples joined in Wedlock; and my Friend,
That Stranger is; This Seate I did intend,
But (? built) at the Coste and Charge of Stephen
Crosbee.

All you that doe this Place pass by
As you are nowe, even soe was I;
Remember Death, for you must dye,
And as I am, soe shall you be.

Anno Domini, 1640.

The rhyme is a variety of a form of monumental inscription, which had been in use, and very popular for two centuries and more, previous to that date; as, for example, on the Brass of William Chichele (a relative of Archbishop Chichele) at Higham Ferrars, Northamptonshire, dating c. 1425 :—

+ Such as ye be,
Such wer we:
Such as we be,
(Such shall be ye).

CHAPTER XI.

ARCHITECTURAL HISTORY.

BOOK I.
CH. XI.

Architecture.

THE architectural structure of existing pews carries us back somewhat further than do the literary records of them to which we have adverted. Throughout this work we have found that the word "pew" is not only not confined to the high-sided, square or oblong boxes to which we now usually apply the term, but was most frequently used, at a date anterior to the earliest of those erections, to designate the benches for the congregation; and where in this part of the work we use the word it will be synonymous with such seats as are now, in common parlance, called "open benches."

We do not propose to speak of the stalls with which the choirs of cathedrals, and conventual and collegiate churches and the chancels of many parish churches, were fitted for the use of the clergy and others taking a special part in the performance of Divine Service, although the word "pew" was sometimes carelessly applied to them also; for our subject is limited to the seats for the general congregation, who can merely be looked upon as intruders when found seated in the choir. Such stalls for the clergy boast a good deal higher antiquity than the benches for the laity, and when seats were introduced in the nave and aisles, they were

naturally upon the model of choir seats and in the architectural style of the period of their erection, but plainer and simpler, and not divided into separate stalls.

BOOK I.
CH. XI.

There is no doubt that the introduction of seats for the congregation was extremely gradual. We may safely anticipate, and the anticipation is confirmed by existing remains, that a long while would elapse from the first introduction of such an innovation before it would be at all common even in rich city churches, and still longer before it spread to the more remote parts of the country. The natural objection which men more or less feel to an unaccustomed novelty, would prevail against any rapid increase of pews, and it would require time before their convenience was acknowledged; while the expense of such solid and excellent work as that always used would form a heavy obstacle to even the simplest and plainest patterns.

Ancient
benching.

In some parts of England it is extremely uncommon to meet with a church still fitted with ancient pews, much of which no doubt fell a victim to the fashion for family isolation, but in other parts it is not uncommon even in the present age of destructive “restoration.” Probably a large number of churches in the poorer and more remote localities were never provided with any regular seats for the congregation, until, in the seventeenth century, square boxes and deep deal troughs were set up; and in fact the accommodation was of so primitive a kind that sometimes there was no pavement or flooring, but merely the hard-trodden ground. Occasionally we find the strong old benches almost concealed by and made use of as a basis for deal superstructures.

Destruction at
“restorations.”

Sometimes we notice old screenwork made up into the

BOOK I.
CH. XI.Screenwork
made up into
pews.

Lavenham.

form of large square pews, by which means persons have been misled into the supposition that real square *pews*, in the modern acceptance of the term, existed a century or two before their actual invention. At Lavenham, in Suffolk, there are two remarkable examples of this unintentional deception. At the east end of the south aisle, and backing against the screen which separates the aisle from the south chantry, and against the south wall of the aisle, there stands a large, nearly square pew formed of screenwork of the height and style of an ordinary *pareclose*; the upper part consists of open tracery, extremely thin, and rough at the back (the inside of the pew), having evidently been cut away from some flat surface: the lower part is of solid panelling, merely pierced with a few very small trefoil or quatrefoil perforations such as are frequently found in screens, and of which the same church furnishes examples, but of which the use has as yet been only surmised; the material proving insufficient for a pew of the size required, one valve of the doors of the chantry screen was worked in to eke it out. There cannot be the slightest doubt that the materials have been converted from some other purpose: such is the history of this celebrated "pew."

In a precisely corresponding position at the end of the north aisle is another square pew of much the same size. The date of the style is later, but the design is remarkably rich, elaborate and varied, and the workmanship most admirable. In an upper panel is a shield bearing the arms, on a chevron three roses, between three mascles: the same arms occur on the parapet of the south chantry chapel with an inscription to Thomas Spring, the founder

of the chapel in 1525 (*a*): the chapel is large and fine, from which we may feel tolerably clear that its possessor or his immediate descendant could not, in addition to the large space which he exclusively possessed, require a pew, not an eighth of its size, amongst the parishioners and in the opposite aisle. But an examination of the "pew" itself is conclusive; amongst other points it will be noted that it is not fitted to the wall against which it abuts except in a very rude manner, and is scarcely affixed to it; two sides are held together by an iron rod across the angle; and the clumsiness of the "make-up" presents a great contrast to the beauty of the original work.

BOOK I.
CH. XI.

Screenwork
made up into
pews.

The early pews were, beyond all question, simply a row of benches with backs; and those which are now commonly termed "open seats," are examples of early pews, or copies or imitations of them. They were always substantial, and of good, durable material, such as oak or beech, and capitally joined and fitted.

Early pews
were "open
seats."

Often it is a difficult thing to determine from an examination of an ancient pew the date of its construction; the detail alone affords any indication, and when the design is very simple any precision becomes almost impossible, especially as some forms of capping continued in use for an extended period of time: when the design is more elaborate in character and comprises traceried panelling or foliage, or carving, the task of assigning a date becomes comparatively easy. The date of the church itself rarely affords any information as to the date of the pews, since so

Dates.

(*a*) The inscription is in large letters running round the exterior of the parapet, as follows:—

Thome Spring armig. Et alicie uxoris eius Qui Estam Capellam
Meri fecerunt Anno dñi M^o CCCC^o bicesimo quinto.

BOOK I.
CH. XI.

Dates.

large a proportion of our churches were erected at an antecedent date, and even where that was not the case, the seats were frequently contributed by some wealthy and well-disposed parishioner at a subsequent period, or the necessary funds were left by his will, as in the churches of Herne and Elmstead, Kent, and All Saints, Stamford, to which we have heretofore adverted.

*Stultifera
Navis.*

We have in our first chapter noted the rarity of regular and fixed seats until a late date, and also the fact that we do not find them represented in illuminations; we may add a reference to the wood-cuts in Barclay's translation of Brant's *Stultifera Navis*, printed by Pynson in 1509; the cuts are chiefly earlier, and one is dated 1494; most of them were also used in an edition of Brant's book published at Paris in 1513, and in the subsequent edition of Barclay's translation in 1570 (*b*), and probably elsewhere.

The ancient pews were exceedingly simple in form, being in fact mere benches with backs and ends, and differ from each other only in their plainness or ornamentation.

Earliest existing pew.

Perhaps the earliest existing pew is at St. John's Church, Winchester: the end is rectangular, but panelled with tracery of a not elaborate design; but from this tracery and a simply-moulded capping, the date may safely be fixed as late decorated work, or about the third quarter of the fourteenth century (*c*).

(*b*) *Stultifera Navis*, Paris, 1513: *De veritatem non tacendam tacentibus*, fol. xevi. Also *De sapientie præceptis audiendis*, fol. xxiii, where Wisdom, as a female, is represented preaching from a pulpit; and the cut is repeated in *De sapientie monitis*, fol. xii (in error for xcii). The same blocks are made use of in the *Ship of Fools* (translation by Alexander Barclay, priest), fol., 1570.

(*c*) St. John, Winchester, engraved in *Proceedings of the Archaeological Institute* (Winchester volume), 1845; and also by the Incorporated

In the districts which are celebrated for their magnificent ecclesiastical woodwork in the fifteenth and sixteenth centuries we should naturally look for the finest examples of early pews; nor are we disappointed. The most beautiful are to be found in Norfolk, with adjoining parts of Lincolnshire and Suffolk, and in Somerset and Devon, and frequently extending throughout the church and almost untouched. In other localities they exist not uncommonly, while in many parts of the kingdom it is quite rare to find old benching.

BOOK I.
CH. XI.

Localities for
ancient
benches.

Very simple examples occur, in which the only decoration is a moulded capping running along the back and end, as at Fen Ditton, Cambridgeshire; Stoke Pogis, Buckinghamshire, and Wymington, Bedfordshire (*d*); and from these there may be found every variety, up to the most elaborately designed bench-ends enriched with paneling of tracery, and tabernacle work or carving, carried upwards in an ogee-shaped, crocketed slope, the apex of which is crowned by a beautiful finial or poppyhead, and with animals seated on the elbows: magnificent specimens exist at Cheddar, Somerset; Histon, Cambridgeshire, and Woolpit, Freslingfield, Wigenhale St. Mary the Virgin, Norfolk (*e*), and Newark, Nottinghamshire.

Rich examples.

Between these two extremes will be found every variety.

Church Building Society, which recommends this and others subsequently mentioned as examples for imitation.

(*d*) Both Fen Ditton and Stoke Pogis are engraved by the Church Building Society; Wymington, in Brandon's *Parish Churches*, Vol. II. p. 35.

(*e*) Cheddar, by the Church Building Society; Histon, in *Cambridgeshire Churches*, published by the Cambridge Camden Society, pp. 75 and 80; Woolpit, in Brandon's *Parish Churches*, Vol. I. p. 57; Freslingfield, *Ibid.* Vol. II. p. 59; Wigenhale, *Ibid.* p. 45.

BOOK I.
CH. XI.Simpler
designs.Good examples
of ancient
benches.

Sometimes the bench-end is perfectly plain, but runs up into a simply-designed fleur-de-lis for a finial, as at Winthorpe, Lincolnshire, and Ketton, Rutland (*f*). More frequently the end, though flat-topped, is, if otherwise plain, ornamented with little buttresses, as at Haseley, Oxon. (*g*), more often it is panelled, and chiefly in later times ornamented with carving. Good examples of simple panelling may be seen at Up Waltham and Clymping, both in Sussex (*h*); beautiful specimens of more elaborate and beautiful geometric traceried panelling occur at Cleyhanger, Devon; Yate, Gloucester, and Crowcombe, Somerset (*i*). Such panelling, combined with rich carving, is seen at Trull, Somerset, and Braunton, Devon (*j*); and carving alone, at Milverton, Somerset, Cubberly, Gloucester, and Crudwell, Wilts (*k*). At Elkstone, Gloucester, though perfectly devoid of all other ornament, the elbows are both curled back in a very unusual manner: it may possibly be an example of an unusually early date (*l*); at Clapton, Somerset (*m*), is one somewhat similar, but it appears to be of late date.

(*f*) Winthorpe and Ketton are both engraved by the Church Building Society.

(*g*) Haseley is engraved by the same, and also in the *Glossary of Architecture*, Vol. II. plate 102.

(*h*) Up Waltham and Clymping are both engraved by the Church Building Society, and the latter also in Buckler's *Parish Churches*, Vol. II. plate 17.

(*i*) Cleyhanger and Yate, both by the Church Building Society; and Crowcombe, in Brandon's *Analysis*, Woodwork, plate 1.

(*j*) Trull, by the Church Building Society; Braunton, in *Glossary of Architecture*, Vol. II. plate 103.

(*k*) Milverton, in *Glossary of Architecture*, Vol. II. plate 103; Cubberly, in same, plate 102; and Crudwell, in Relton's *Sketches of Churches*.

(*l*) Elkstone, in *Glossary of Architecture*, Vol. II. plate 102.

(*m*) Clapton, in *Proceedings of the Somerset Archaeological and Natural History Society*, Vol. X. p. 25.

The backs of the benches are usually perfectly plain, though it is not uncommon to find the end one of a row panelled with tracery, as at Bacton, Norfolk (*n*); and in some of the richer examples the backs of all the pews are similarly panelled and occasionally pierced, as at Freslingfield and South Creak, Norfolk (*o*).

BOOK I.
CH. XI.

Good examples
of ancient
benches.

We may note the following, in addition to those already referred to, as amongst the earliest and most beautiful or valuable examples of the period:—

Other good
examples.

Bedfordshire . .	Wimington (<i>p</i>).
Cambridgeshire .	Cherry Hinton (<i>q</i>).
„	Comberton (<i>r</i>).
„	Chesterton (<i>s</i>).
Devonshire . .	Bovey Tracey (<i>t</i>).
Essex . . .	Billericay (<i>u</i>).
„	Great Waltham (<i>x</i>).
Norfolk . . .	Worstead (<i>y</i>).
Somersetshire .	Nettlecombe (<i>z</i>).
Suffolk . . .	Bentley (<i>a</i>).
Sussex . . .	Burpham (<i>b</i>).

Among the ornamental carvings with which the bench-

(*n*) Bacton, in Brandon's *Parish Churches*, Vol. II. p. 67.

(*o*) Freslingfield and South Creak, in Brandon's *Parish Churches*, Vol. II. pp. 59 and 63.

(*p*) Wimington, in Brandon's *Parish Churches*, Vol. II. p. 35.

(*q*) Cherry Hinton, in *Cambridgeshire Churches*, Vol. II. p. 26.

(*r*) Comberton, in Brandon's *Analysis*, Woodwork, plate 29.

(*s*) Chesterton, by Church Building Society.

(*t*) Bovey Tracey, *Ibid*.

(*u*) Billericay, *Ibid*.

(*x*) Great Waltham, in Brandon's *Analysis*, Woodwork, plate 1.

(*y*) Worstead, in Brandon's *Analysis*, plate 31.

(*z*) Nettlecombe, in *Glossary of Architecture*, Vol. I. p. 282.

(*a*) Bentley, in Brandon's *Analysis*, Woodwork, plate 5.

(*b*) Burpham, by Church Building Society.

BOOK I.
CH. XI.

Ornamental
carvings.

ends frequently are decorated, several deserve mention. At Braunton, Devon (*c*), are shields charged with the Instruments of our Lord's Passion: and at Bromfield, Somerset (*d*), the sacred monogram within a carved bordure of vine with grapes. The initials *S.* and *UU.* appear separately on bench-ends at Trull, Somerset (*e*); these may be the initials of the donor, evidently of late date; and somewhat similar examples occur at Stogumber, Somerset, and Hurstpierpoint, Sussex (*f*). There is a very singular bench-end at Spaxton, Somerset (*g*), dating apparently in the third quarter of the fifteenth century: it bears the representation, in low relief, of a Fuller, standing behind a bar, across which is hung the cloth upon which he is at work with an instrument, two-handled, but otherwise like a mortar board; behind him is hung another length of cloth, and in the vacancies in the panel are sheers, a comb, and other implements.

At Crudwell, Wilts (*h*), we find the Royal Arms and supporters of King Henry VII., and at Milverton, Somerset, are the Royal Arms, probably of King Henry VIII. (*i*); and in the same church are five specimens carved with medallions, excellent likenesses of Queen Mary, kneeling, and also portraits of Cardinal Pole and Bishop Gardner (*j*).

On the benches at Cherry Hinton, Cambridgeshire, of

(*c*) Braunton, in *Glossary of Architecture*, Vol. II. plate 103.

(*d*) Bromfield, in *Proceedings of Somerset Archaeological and Natural History Society*, Vol. V. frontispiece.

(*e*) Trull, by Church Building Society.

(*f*) Stogumber and Hurstpierpoint, mentioned in *History of Pves*, p. 21.

(*g*) Spaxton, engraved in *Proceedings of Somerset Archaeological and Natural History Society*, Vol. VIII. p. 1.

(*h*) Crudwell, engraved in Relton's *Sketches of Churches*.

(*i*) Milverton, engraved in *Glossary of Architecture*, Vol. II. plate 103.

(*j*) Milverton, mentioned in *History of Pves*, p. 24.

earlier date than those last mentioned (*k*), were formerly various inscriptions, some in Latin, some in English, including William of Wykeham's well known motto—

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CH. XI.

Ornamental
carvings.

Mancryp makith Man.

It is, however, only at a rather late period that we meet with any date upon the pews. The earliest appears to be one at Bishop's Hull, Somerset (*l*), where some good seats bear the date 1530; one at Crowcombe, Somerset (*m*), bears the date MCCCCXXXIII, and the same year is marked on one at Bourne, Cambs. (*n*); some very poor specimens at Milverton (*o*) are dated 1540.

Earliest dated
benches.

When doors were added to the benches the intention of appropriation was manifest. At what date this took place we are unable to discover from the benches themselves; but as various records of parish expenditure for garnets or hinges for the pews inform us, they certainly were in, at all events, occasional use as early as 1457, in the church of St. Michael, Cornhill (*p*).

Doors.

The benches at Bishop's Hull, Somerset, have a bar across by way of door; this might be with the object of making novelty less conspicuous, or it might be for the sake of economy. At Tattershall, Lincolnshire, there are regular doors, but very low. Sometimes Jacobean or later doors have been added to the old seats, as at Chesterfield, Derbyshire (*q*).

(*k*) Cherry Hinton, mentioned in *Cambridgeshire Churches*, p. 27.

(*l*) Bishop's Hull, mentioned in *History of Pwes*, p. 20.

(*m*) Crowcombe, engraved in Brandon's *Parish Churches*, Vol. II. p. 21.

(*n*) Bourne, mentioned in *History of Pwes*, p. 20.

(*o*) Milverton, mentioned in *History of Pwes*, p. 20.

(*p*) *St. Michael, Cornhill, Parish Accounts*, p. 11; and *Archæological Association Journal*, Vol. XXIII. pp. 324 and 325. See Chap. IV., ante.

(*q*) These examples are cited in the *History of Pwes*, p. 20.

BOOK I.
CH. XI.

Arrangement.

Square, or
double pews.

It may be asserted without hesitation that whilst Gothic architecture prevailed, the seats always consisted of rows of single benches, and they seem always to have faced the east, though it is possible examples might be found in which they were placed facing inwards, *i. e.* north or south; but ecclesiastical tradition and practice never permitted of any part of the congregation being seated with their backs to the altar. A subsequent arrangement was that of wider pews more or less approaching a square in plan, and containing two seats facing each other and frequently a cross seat at the top, so that the seats occupied three sides of a parallelogram, all facing inwards, like the interior of an omnibus. The earliest which bears an actual date is at Barking, Suffolk, which is dated 1601: in the north aisle of Geddington, Northamptonshire, is one with the names of Churchwardens and Minister, and the date 1603 (*r*): and from that time a series of dated pews of the same form may be met with. But there are single pews scattered here and there about the churches, but no church containing any range of such double pews, dated previous to 1634, has been remarked (*s*).

Faculties for
double pews.

This very well coincides with the evidence obtained from Faculties, and there is no doubt that such pews were first built by individuals for the use of themselves and families under authority purporting to be conferred by a Faculty from the Ecclesiastical Court of the Diocese or Archdeaconry. During the first twenty-four years in which Faculties for seats were granted by the Consistory Court of the Bishop of London, commencing in 1595,

(*r*) Barking and Geddington, mentioned in *History of Pews*, p. 29.

(*s*) *Ibid.* p. 40.

there are only four examples in which the space was sufficient for double pews, or rather three, for the fourth (at Chelmsford, in 1615) was only 4 ft. 6 in. wide, and could scarcely have been so used with moderate comfort: the others were at Great Baddow, in 1612, 5 ft. 6 in. wide; at Tarling, in 1616 (which was asked for under the pretence that it would be very useful as a churching pew) 6 ft.; and at Haverstock, in 1616, 5 ft. 6 in. (*t*).

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CH. XI.
Faculties for
double pews.

The Chesterton faculty is, however, an earlier example; it is dated in 1579, and the dimensions of the space purported to be granted were 11 ft. from east to west, by 7 ft. from north to south (*u*); the pew is no longer in existence.

At the same time that the pew extended in lateral dimensions it grew in height. We learn from the Faculties dated in the period mentioned, that at Great Baddow, in 1612, one pew, which measured 8 ft. 9 in. \times 5 ft., and was intended for the family occupation, was to be 5 ft. high, and the other, which measured 8 ft. by 5 ft. 6 in. was for the maids, and was to be 4 ft. 6 in. high. At St. Martin, Orgar, London, in 1616 (*x*), one pew measuring 12 ft. \times 4 ft. was to be 5 ft. high, and another 12 ft. \times 1 ft. 6 in. wide, was to be 4 ft. high; perhaps the latter was for children, since no full grown human being could have occupied such a place only 1 ft. 6 in. wide. In 1614 we find a mention of a pew belonging to Lady Hewitt, at St. Lawrence, Pountney (*y*), which, being so high above the

Increase in
height.

(*t*) London Registry, *Vicar-General's Books*, Vol. XI., Great Baddow, fol. lxxxv; Tarling, fol. ccix; Haverstock, fol. ccxii.

(*u*) Chesterton, Ely Diocesan Registry, *Book of Precedents*, fol. elxxxvi.

(*x*) St. Martin Orgar; *Vicar-General's Books*, Vol. XII. fol. xxvii.

(*y*) St. Lawrence Pountney; *Ibid.* Vol. XI. fol. cxxx.

BOOK I.
CH. XI.

Increase in
height.

others as to be unsightly, was directed to be cut lower, but at the cost of the parishioners.

In 1612 a proceeding was instituted by the Official Principal of the Court of London against Messrs. Ralph Heard and Robert Heard, the churchwardens of Stifford, Essex (z):—

Notatur officio ex publicâ famâ, that there is a close pewe built six foote high by one Mr. Thomas Gurney, Esquier; et respondento eidem, fatentur eandem esse verum. Unde dominus monuit eos that they take downe the head of the same pewe, ante proximum, &c.

They were, however, at this early date constructed of an ornamental design, and decorated with surface carving; the fact that a pew illegally built and for which a confirmation was required, or one for the erection of which a faculty was asked, was ornamental to the church, and costly, seems generally to have been one of the grounds upon which the court was asked to make a grant.

In the Confirmation of a seat 7 ft. by 3 ft. in St. Clement Danes in 1595 (a), it recites that *suis magnis sumptibus edificari, extrui et ornari fecit*.

In 1612, in a faculty for confirmation of certain seats in Enfield Church (b), to the owners of a house anciently called Fortescue House, it is recited that the applicant wished to transfer to a more convenient part of the church a seat which he had built at his own expense and to the ornament of the church.

(z) Archdeacon Hale's *Proceedings in Ecclesiastical Courts*, p. 236.

(a) St. Clement Danes; *Vicar-General's Books*, Vol. VI. fol. cexliii.

(b) Enfield; *Ibid.* Vol. XI. fol. xlv.

A faculty was issued by the chancellor of the diocese of London in 1612, confirming to one John Gilberd, *sedes tamen sive sedilia* in the church of Woodford, Essex (*c*), which seat he had constructed and built at his own expense and to the ornament of the church.

BOOK I.
CH. XI.

Increase in
height.

The authorities which we have referred to in a previous part of this work show how strongly the fashion then set in from about this period, though it did not escape opposition; it will suffice to quote from Dr. Pocklington, who was one of those who afterwards suffered much persecution for his faith (*d*):—

Rapid increase,
though
opposed.

Ambition to step up into the highest roomes and seats, and there to inclose and inthronize themselves, was confined to Pharisaicall feasts or Synagogues; holy men and good Christians in the ancient times had no such custome—sought no such state or ease; neither the Churches of God. The *Churches* of God did, and doe detest the prophanenesse that is, and may be committed in close, exalted Pewes.

The last paragraph was added in the second and subsequent editions: the work excited so much attention that the two first editions were both published in the same year, viz., 1637.

The causes which led to the fashion of high pews, like those of fashions generally, is only conjectural; but the author of the *History of Pwes* attributes their adoption to the objection entertained by the Puritans to certain ceremonial observances (*e*), viz., I. The Injunction of Queen

Reasons for
high pews.

(*c*) Woodford; Ibid. Vol. XI. fol. xciii.

(*d*) Pocklington's *Altare Christianum*, 2nd ed. p. 28.

(*e*) *History of Pwes*, p. 52.

BOOK I.
CH. XI.Reasons for
high pews.

Elizabeth, issued in the year 1559 (*f*), and subsequently incorporated into the Canon Law of the English Church by the Canons of 1603 (*g*), directing that due reverence should be done by all persons present whenever in time of Divine Service the name of JESUS was mentioned: II. The practice of standing up whenever the *Gloria Patri* was said, it being then customary to remain sitting during the reading of the *Psalms*: III. Perhaps in the injunction of the Canons of 1640 (*h*), about bowing towards the altar: and IV. The enforcement of the order that communicants should receive at the altar rails, and kneeling. To these we may add, V., the practice of standing up during the recital of the creed. The first two of these reasons are discussed at some length by the author, who quotes many authorities in support of his view; the endeavour to enforce the latter was one of the charges made by the notorious Peter Smart against Bishop Cosin (*i*):—

Who will say to others, even gentlewomen of the best rank sitting in their pews; Can ye not stand, you lazie sows?—taking them by their arms, and tearing their sleeves to raise them up when the Nicene Creed is sung; thus Doct. Cosin did.

In fact it seems highly probable that, if not actually the cause of the adoption of high pews, they may have had very great influence. But no doubt comfort and privacy were also potent considerations. In fact, to mention an example in illustration, it is expressly so stated in the faculty for a seat in Haverstock Church, Essex, 1616 (*j*),

(*f*) *Sparrow's Collection*, p. 77.

(*g*) Canons of 1603; No. XVIII.—Cardwell's *Synodalia*, p. 255.

(*h*) Canons of 1640; No. VII.—Cardwell's *Synodalia*, p. 406.

(*i*) *Canterberries Crueltie*, by Peter Smart, publ. in 1643; p. 14.

(*j*) *Vicar-General's Books*, Vol. XI. fol. ccxii.

being the uppermost on north side on the south Alley adjoining the chancel; 9 ft. \times 5½ ft. with leave to new build as he shall think fit in decent manner,

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CH. XI.

Reasons for
high pews.

and to make the same higher with wainscott or boord to breake and kepe of the winde that cometh out of the Chancell, so as the same be done without iust occasion of offence or piudice to any other parishioner.

In modern times when the Church's long dormant energy was turned to church building, the importance of the form and arrangement of seats became manifest. The Incorporated Society for Promoting the Enlargement, Building and Repairing of Churches and Chapels saw that it was of the highest consequence to consider the arrangement of the buildings towards the erection or enlargement of which their Society was asked to contribute; it was not sufficient to create more room for worshippers, but it was important to make it available for as many as possible; and here it was necessary to steer between two extremes, and while accommodating as large a congregation as possible, yet to allow to each individual a sufficient space to perform his devotions in the accustomed postures enjoined by the Church. The Society very judiciously then, and subsequently, gave much attention to the question. At first they were of opinion that a space of thirty inches from front to back (inclusive of the thickness of the materials) by eighteen inches in width was sufficient for an adult; but their later opinion, based upon experiment, is that though thirty-three inches between the partitions was sufficient for convenience, it is desirable to allow a space of three feet clear, where funds will permit, and

Considerations
by Church
Building
Society.

Dimensions
agreed to.

BOOK I.
CH. XI.Suitable
dimensions.

there must be a minimum allowance of twenty inches in width (*k*). They absolutely prohibit double pews. The Ecclesiological Society took up the subject with great energy in 1842, and their measures of ancient seats give an average of about two feet nine inches space from bench to bench (*l*).

Another consideration, bearing upon the amount of space required, was as to the height of the backs, and whether they are best vertical or sloping. If the backs are high, much more space is necessary between the seats, for an absolutely vertical position of the body is not a position of rest; it is essential that the spine should be allowed to incline backwards, which must be either effected by making the seat-back incline backwards, or by the individual sitting forwarder and then resting back; but the simpler plan is certainly that which in the mediæval times was adopted, of making the back of the seat low, when it supports the hollow of the back, which is the part where support is most needed, while the shoulders lean slightly over. It is further suggested that the seat may slope slightly from front to back, about three-fourths of an inch. But there can be no doubt that the depth of the seat from front to back, and its height from the ground, is a very material consideration; the seats which until recently were in general use were too narrow and high, and necessitated the use of hassocks so high that they are even made to serve the purpose of hat-boxes. The average depth of ancient seats was about 1 ft. 3 in., or about that of an

(*k*) Incorporated Church Building Society, Paper on the Arrangement of Churches.

(*l*) See the *Ecclesiologist*, Vol. I. p. 108.

ordinary dining-room chair, and their average height from the ground was about 1 ft. 6 inches. This seems a good medium. In some new railway-carriages, where, especially for long journies, the main object is to provide the utmost comfort and rest, the seats are twenty-four inches deep; but these are too deep to be comfortable to any but peculiarly long-limbed passengers. The purpose of church-seats does not need, nor is it desirable, that they should measure nearly so great a depth as the seats of railway-carriages.

BOOK I.
CH. XI.

Suitable
dimensions.

CHAPTER XII.

COMFORT; EXTRAVAGANCIES.

BOOK I.
CH. XII.

Comfort.

THE earliest recorded pews were certainly intended to afford a reasonable amount of comfort, and were in themselves in accord with the church in which they were placed, and, as we have seen, frequently of a very handsome design. In the *Boke of Nurture* (*a*), written ante A.D. 1447, the attendant is directed to see that the pew for prince or prelate or any other potentate be made prepare with cushion, carpet and curtain, and that the beads and book, for the proper purpose of devotion, especially should not be forgotten. So in the Lady Wyche's case (*b*), in 1468, her Counsel speaking of a seat in the chancel, speaks of the carpet, book and cushion. But it must be borne in mind that pews mentioned at an early date are for the convenience of worship, and not merely for ease and comfort. This is distinctly put in the accounts of Ludlow (*c*) Church in 1541, which speak of "Annes Davis' knelynge place," and "Elsabeth Gwyn's knelynge place;" and in 1545 "Elizabethe Glover, for her knelynge place;" and the accounts of St. Matthew, Friday Street, London (*d*), in

Kneeling-
place.

(*a*) John Russell's *Boke of Nurture*, Early English Text Society's edition, by Mr. Furnivall, p. 179.

(*b*) *Year Book*, 9 Edward IV., ed. 1597, p. 14.

(*c*) *Archæological Association Journal*, Vol. XXIII. pp. 317 and 318.

(*d*) *Ibid.* Vol. XXV. p. 262.

1548, “ix Benches to knylle upon in the pewes.” Latimer and Bradford, in 1553 (*e*), speak of time-serving and un-willing conformists at the Reformation, neither worshipping nor kneeling, but “sitting still in their pews” at the time of Mass. And in the Will of Dionice Leveson (*f*), in 1560, she mentions “the pew that I commonly use to kneel in.”

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CH. XII.

Intended for kneeling.

So also the intended uses for the seats granted by the Faculties were very explicitly set forth, as for example in that relating to Enfield Church (*g*):—

Ad sedendum, genua flectendum, divina audiendum, aliasque religiosas devotiones peragendi in sedilibus predictis tempore celebracionis divinorum et verbi Dei predicacionis.

In another, in the church or chapel of Ullenhall otherwise Ownall, in the Diocese of Worcester, in 1610 (*h*):—

In quâ ipse cum liberis suis et famulia sua, tempore divinorum precum, sedere, genua flectere, et preces offundere commodè possint.

As already mentioned it was usual to impart an ornamental character to pews for which a faculty was asked, and not unfrequently these jackdaws appeared in peacock’s plumes; destroyed screens and stall-work, supplied economical materials for the construction of pews, and in later times for pulpits. Instances of such conversions are not uncommonly to be met with yet existing; and persons unacquainted with mediæval archæology and early wood-

Ornament

(*e*) Walcott’s *Sacred Archæology*, s. v. Pew.

(*f*) Prerogative Registry, 60, *Mellersh*.

(*g*) Enfield; *Vicar-General’s Books*, Vol. XI. fol. xlv.

(*h*) Worcester Registry, *Bullingham*, fol. lxxxxvi.

BOOK I.
CH. XII.

Ornament.

work naturally fall into the error of ascribing to such pews or pulpits the date of the carved work with which they have been constructed. We have already adverted to two very remarkable examples at Lavenham, in Suffolk. As another, of many examples, may be mentioned the fact that part of the rood-loft of the church of St. Martin, London, was purchased by the parish of St. James Garlick Hythe (*i*), no doubt for such purpose.

Comfort; mats
and cushions.

The diary of Prior Moore, of Worcester (Cathedral) (*j*), 1518-35, mentions amongst the new year's gifts he received, "a pillow of grene and red silke for my pewe," but no doubt meaning his stall in the Cathedral.

The account of produce of sales of the goods of the church of All Hallows, Bread Street, between 2nd and 6th Edward VI. (*k*), speak of

a long mat, 12½ yards, & mats for the 4 new
pews 2^s 4^d

And also at St. Michael's, Cornhill (*l*):—

1574. Paide for mattes for poore folkes
pewes in the Churche ij^s viij^d

1574. Paide for X yardes of Cornisshe
mattes for my Ladye's pewe wth
nayles & workmanshipp iiij^s vj^d

Sir Thomas More, complaining of the increasing want of reverence in church, says (*m*):—

if it hap us to kneele theñ either do we knele upon y^e

(*i*) Paper by W. Durrant Cooper, Esq., F.S.A., in *Transactions of the London and Middlesex Archaeological Society*, Vol. III. p. 397.

(*j*) Noakes' *History of the Monastery and Cathedral of Worcester*, p. 170.

(*k*) Extracts from State Papers, *Church Review*, 21st October, 1865.

(*l*) *Cornhill Churchwardens' Accounts*, pp. 168 and 169.

(*m*) Thomas More's *Works*, p. 1359 f.

tone knee & lene upon y^e tother, or els will wee have
a *cushion* layd under thē both, yea & sometime
(namely if we be any thyng nyce & fine) we cal for
a *cushio* to beare up our elbowes to, & so like an
olde rotten ruynouse house, be we fain therewith
to bee staide & underpropped.

As a luxury imitated from the custom in the houses of Strewing floor.
the upper class, the floor was occasionally strewed with
rushes, as at Ludlow (*n*):—

1560-1. Oct. 30.

Aboute that tyme, to the pavier's wif, ij
burden of rushes & makeinge cleane
Mr. baylive's seat iiij^d

1571-2.

Paid for making clene master baylyef
seate iiij^d, & for two burden of roshes
to strawe it agayne viij^d
Paid Burges for makeinge bigger the
same pewe doore, & for hys tymber
& nayles ij^s viij^d

And so at St. John Zachary, London (*o*):—

1594. Paied for birche for church xij^d

And, later, George Herbert, in *A Priest to the Temple*,
1652, says (*p*):—

The Countrey Parson * * takes order * *
that the Church be swept, & kept clean without
dust, or Cobwebs; & at great festivals strawed, and
stuck with boughs, & perfumed with incense.

(*n*) *Churchwardens' Accounts*, Camden Society, pp. 106 and 152.

(*o*) St. John Zachary, London, Churchwardens' Accounts, unpublished.

(*p*) George Herbert's *Priest to the Temple*, chap. xiii.—The Parson's
Church, ed. 1652, p. 57.

BOOK I.
CH. XII.Dust and ver-
min.

When pews had become general, and especially when they were strewed with rushes and supplied with mats, it was likely that dust and vermin would accumulate. Thus at St. Michael's, Cornhill, there is entered (*q*):—

1469. payed for iij rat trappes for the
Chirche vj^d

And the same year there was this further charge (*r*):—

1469. Iīm paid to the Raker for caryng
away of the Chirche dust whan
the pewes were made clene . viij^d

And, again, five years later (*s*):—

1474. paid to the raker for caryng away of
the Chirche dust when the pewes
were made clene viij^d

And at St. Stephen, Walbrook, London, the church-
wardens' accounts for the year 1474 show this item (*t*):—

Pay pur makyng clene of the pewys
ꝛ cherche yerd the xxij iour
dec'br an^o E^{di} (quarti) xiiij vj^d

And in 1494 the churchwardens of All Hallows, Staining,
London (*u*):—

p'd to the Raker for caryng away the
dust of mykyng clene the pues in
the Chirch jx^d

(*q*) *Cornhill Accounts*, p. 40.

(*r*) *Ibid.*

(*s*) *Ibid.* p. 54.

(*t*) St. Stephen, Walbrook, London, Churchwardens' Accounts, unpublished.

(*u*) All Hallows, Staining, London, Churchwardens' Accounts, unpublished.

At St. Mary, Woolchurch, London, in 1557 (*x*):—

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Paied the fyfte daye of Aprill to the
carte^r for carrynge awaye the
rubbishe of the pues iiij^d

Rubbish.

The former amounts were not so trifling as might appear until we consider the relative value of monies then as compared with the present day.

Later still, the subject frequently formed an item of inquiry at Bishops' Visitations (*y*).

Sometimes the effect rather exceeded mere dust, as at St. Margaret's, Westminster (*z*), where in 1610 they paid sixpence for salt to destroy the fleas in the churchwardens' pew. And larger vermin also found a harbour, as at St. Michael, Cornhill.

Sir Thomas More relates "a Merry Tale," from which A Merry Tale. it clearly appears that pews were low-sided, for had it been otherwise the offender might have made his recantation quite privately, while the object in ordering the penance was clearly that of publicity (*a*).

The pore man, quod he, had founde y^e priest ouer famylier with his wife, and bycause he spake it a brode and coulede not proue it, the priest sued him before y^e Bishoppes offyciall for dyffamatyon, when the pore man upon paine of cursynge, was commaūded that in his parysche chyrch, he should upon y^e sondaye, at high masse time stāde up & sai, mouth, thou lvest. UUherupō for fulfillingge of

(*x*) St. Mary, Woolchurch, Churchwardens' Accounts.

(*y*) e. g. Bishop Wren's *Ely Visitation Articles*, 1662, chap. iii. s. 6.

(*z*) Nichols' *Illustrations*, p. 29.

(*a*) Sir Thomas More's Works, fol. 1557, 127 d.

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CH. XII.

A Merry Tale.

hys penāce, up was the pore soule set in a pew, that y^e peple might wōder on him and hyre what he sayd. And there all a lowde (whan he had rehersyd what he had reportyd by the prieste) than he sett his handys on his mouth, & said, mouth, month, thou lyeest. And by and by thereupon he set his hand upon both his eyen & sayd, but eyen, eyen q? he, by y^e masse ye lye not a whitte.

Double pews.

The double, or family pews, which had been introduced with the commencement of the seventeenth century, and soon superseded all other patterns for building until our own day, seem always to have been high, in order to attain increased comfort and privacy. They gradually increased in dimensions and luxury, and attained their maximum in point of magnitude and comfort, in the last century, as some examples still survive to attest: their progress may be traced.

Pews like
tabernacles.

In Queen Elizabeth's reign Bishop Corbet, of Norwich (*b*), says:—

I am verily persuaded, were it not for the pulpit and the pews (I do not now mean the Altar and the Font for the two Sacraments, but for the pulpit and the stools as you call them;) many Churches had been down that stand. Stately pews are now become tabernacles, with rings and curtains to them. There wants nothing but beds to hear the word of God on: we have casements, locks and keys, and cushions; I had almost said bolster and pillows; and

(*b*) Letter to his Clergy to make collections on behalf of St. Paul's, London, dated 1622, in Harl. MSS. 750; *Bishop Corbet's Poems*, reprinted 1807, edited by Gilchrist, pref. xlv.

for those we love the church. I will not guess what is done within them, who sits, stands or lies asleep, at prayers, communion, &c., but this I dare say, they are either to hide some vice, or to proclaim one; to hide disorder, or proclaim pride.

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Weever, whose work on *Funeral Monuments* was published in 1631, distinctly refers to the recentness of the change (*c*), and condemns—

High, and easy
to sleep in.

seates or pews made high and easie, for the Parishioners to sit, or sleepe in; a fashion of no long continuance, and worthy of reformation.

Dr. Pocklington, in the second and subsequent editions of his work entitled *Altare Christianum*, which seems to have had an extensive sale, since it rapidly passed through several editions, took occasion to reprobate the ambition which led men to step up into the highest places and there enclose and enthrone themselves, as being suitable only for Pharisees and opposed to the practice of the Churches of God, which, on the contrary, detested “the prophanesse that is, or may be, committed in close and exalted pews” (*d*).

And in 1638, Bishop Mountagu inquires (*e*):—

Hinderance to
other persons.

S. 6. Are the seats and pews built on an uniformitie?
or do they hinder and incumber their neighbours in
hearing God’s word and performing Divine Service?

(*c*) Weever’s *Funeral Monuments*, fol., London, 1631, p. 701.

(*d*) Dr. Pocklington’s *Altare Christianum*, ed. 1637, p. 28.

(*e*) Bishop Mountagu’s *Norwich Visitation Articles*, reprinted Cambridge, 1841, p. 42.

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Minister hunting up and down to find the congregation.

Udall, in *Communion Comelinessse* (*f*), 1641, says:—

The people are shut up close that they neither see nor heare, untill the Minister come to the Pewes where they sit; in which, sometimes, there are divers Pewes, and they farre distant one from the other; in which there are but one, or but two Communicants, in this corner, and one or two in the other corner; and others up in the gallery; and so will have the Minister to hunt up and downe to search them out, and administer unto them scattered here and there in severall Pewes, remote one from the other. And I thinke shortly the Sacrament of the Lord's Supper will get up into the Steeple among the Bells with us as the Sacrament of Baptisme hath done heretofore among the Papists.

High pews, an innovation.

He speaks repeatedly of them as being a recent innovation (*g*):—

A late new kind of building the Pewes so much higher and closer than heretofore.

Our new, high, long and close Pewes . . . being a late and novell fashion thing.

The new manner of making the Pewes in later times, where they are built higher and longer than heretofore they have been.

Bishop Wren, in 1662 (*h*), inquires of the churchwardens of his diocese, whether the parishioners

draw near, and with all Christian humility and reverence come before the Lord's Table? And

(*f*) *Communion Comelinessse*, by Rev. Ephraim Udall, Rector of S. Austin's, London, 1641, p. 5.

(*g*) *Ibid.* preface and p. 6.

(*h*) *Ely Visitation Articles*, 1662, chap. vii. sec. 13.

not (after the most contemptuous and unholy usage of some, if men did rightly consider) sit still in their seats, or pews, to have the blessed Body and Blood of our Saviour go up and down, to seek them all the Church over?

BOOK I.
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Holy Sacrament brought to occupants of pews.

Bishop Wren, in his *Visitation of the Diocese of Norwich* in 1636, and again, after the Restoration, when he had become Bishop of Ely, inquires (*i*):—

Are the seats well maintained, and the bottoms of them either boarded or paved? The Parishioners using none but pesses and fast mats in their seats to kneel upon, or for warmth in winter? Are any pews so loftily made that they do any way hinder the prospect of the Church or Chancell, or that they which are in them be hidden from the face of the Congregation?

Seats boarded or paved.

And he ordered,

that no pews be made over high so that they which be in them cannot be seen how they behave themselves, or the prospect of the Church or Chancell be hindered; and therefore that all pews, which within do much exceed a yard in height, be taken down near to that scantling, unless the Bishop by his own inspection, or by the view of some special commissioners, shall otherwise allow."

Not to exceed a yard high.

At Cholderton, Wiltshire (*k*), is a pew 6 feet high, with glass windows in the door to enable the occupants to see

(*i*) Bishop Wren's *Norwich Visitation Articles*, 1636, chap. iii. sec. 13; *Ely Visitation Articles*, 1662, chap. iii. secs. 6 and 16.

(*k*) *Church of the People*, 1867, p. 142.

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Pews like private sitting-rooms.

the preacher, and other windows in the side to enable them to survey the congregation: all being fitted with sliding shutters. At Branksea, Dorsetshire (*l*), was one as large as a drawing-room, and magnificently furnished; and having a fireplace and windows and blinds to secure privacy from the rest of the congregation. At Merstham, Surrey (*m*) (until very recently), and at Mickleham, Surrey, were pews raised some feet above the level of the cold, damp floor, comfortably fitted and possessing a fireplace, and table; by no means uncommon examples. Such "pride of place" seems peculiarly offensive, even when the particular locality be a private chapel annexed to the parish church.

But still the poor consolation may be held out that we are not so bad as our neighbours in Northern Europe, though it must be admitted that they have a show of excuse in their climate.

Extraordinary arrangement at Dresden.

Dresden furnishes, perhaps, the most extraordinary example, in the Frauenkirche, built in 1734, on somewhat of the plan of a Greek cross, with the arms all apsidal, and a vast dome over the intersection. The ground floor, or pit, is partly occupied by benches, all numbered. The north, south and west arms are filled up with galleries in seven or eight tiers, the lowermost projecting forward as in the *balcon* of a theatre; there are, besides, many minor openings like windows, serving as private boxes. On each side of the chancel is a small parlour, separated from it by

(*l*) *Church of the People*, 1865, p. 28, quoting from the *Shrewsbury Chronicle*, 4th November, 1864.

(*m*) *Surrey Archæological Society's Collections*, Vol. III. p. 8 (article by the present author).

glass, a few panes of which will open ; here sit the leading people of the town. It is estimated that the church contains sittings for 6,000 people, and standing for 2,000 more.

The ancient cathedral of Trondhjem (Drontheim) in Norway (*n*) (built by an English bishop in the twelfth century) has since the establishment of Protestantism been fitted up in an irregular manner with private boxes. On each side of the choir (the nave having been destroyed) are three, or even four, tiers of private boxes, not very regular in form or size, but comfortably glazed and curtained ; the pews below are strictly preserved, so that the few poor who do attend the service must stand all the time, and on the cold pavement—no light infliction in that northern latitude, even in summer. A constant expectation is both audible and visible.

At Trondhjem.

It is not necessary to furnish other examples ; they are common enough in the northern half of Europe.

Nor is it necessary to notice how far the pew-system has prevailed on the Continent. In Holland, North Germany, and Scandinavia, where the popular religion is Lutheran, the appropriation of seats is more strongly marked than in our own country, though in many places the separation of sexes has not disappeared. In the extreme North of France, the Roman Catholics have adopted it ; and the name of the lessee or a card inscribed “ *A louer à Noël*,” is constantly seen. Central and Southern France adopts chairs in preference to benches ; often the chairs are pri-

Pew-system
prevalent in
North of
Europe.

(*n*) The *Ecclesiologist*, Vol. XVII. (1856), p. 401 (article by the present author).

BOOK I.
CH. XII.Arrangements
on the Conti-
nent;and of the
Eastern
Church.

vate property, bearing on a brass plate the name of the owner, and arranged to shut up and lock together, so as to prevent their use by any other person; but they have no claim to any particular site, and the owners pay a trifling charge for their standing just as the public pay a sou or two for the use of a chair. Spain and Italy have the right to boast of their cathedrals and churches being absolutely free and unappropriated; and the whole Eastern Church, including Russia and Greece, with its resolute persistency in maintaining the usages of tradition, preserves its churches with a clear and free area to all worshippers alike.



CONCLUSION OF BOOK I.

BOOK I.

Conclusion.

WE now close this part of the subject. Our task has been a somewhat heavy one in consequence of the wish to render it, by the investigation of each branch of the subject, as complete as lay within our power; this necessitated a reference to a large number of authorities, many of which are original records and documents, and others are scarce or difficult of access. The extracts relating to the earlier period, if sometimes they appear to be too freely introduced, will yet be found either singly or collectively to have a more or less important bearing; and when once inserted have in scarcely any instance been repeated. In the extracts referring to the seventeenth century, when the mention of pews became frequent, it was necessary to select only those of most consequence.

To a certain extent the subject may be deemed an archæological study; but its bearing upon the present state of the Law of Pews, may render it a matter of practical importance.

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THE
History and Law
OF
CHURCH SEATS,
OR
PEWS.

BY
✓
ALFRED HEALES, F.S.A.,
PROCTOR IN DOCTORS' COMMONS.

BOOK II.—LAW.

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INTRODUCTION TO BOOK II.

ORIGINALLY Churches and Chapels in England were altogether unprovided with seats for the Congregation. In the Chancel there were seats for the Clergy and others taking part in the performance of Divine Service; and especially in the Churches of Conventual and Collegiate bodies (for whom extremely long, as well as frequent Services were appointed), stalls were provided as a matter of necessity.

To Monarchs and Persons of high position, and Patrons of Churches, seats were permitted by authority, and from an early period such seats were in the Chancel.

Gradually seats for the Congregation at large, were introduced into the body of the Church; and it has been our endeavour to trace their Early History in BOOK I. of the present Work.

There is no Ecclesiastical or Civil Law under which such seats were introduced, nor is there any by which their use is regulated, except such as in course of time has grown up; and since it is found that different considerations affect different classes of buildings, this part of our Work has been divided accordingly.

Cathedrals stand alone. Scarcely any claims to, or legal questions respecting the seats in them have ever been raised. This branch of the subject forms PART A.

The bulk of the Work is necessarily occupied by the considerations respecting the seats in Parish Churches, amounting in number to many thousands, scattered throughout the length and breadth of the land; their dependant Chapels of Ease are ruled by nearly like considerations. This portion of the subject forms PART B., and comprises three DIVISIONS; **a.** Ordinary Seats, **b.** the Parson's Seat, and **c.** Private Seats.

Of these DIVISIONS, **a.** Ordinary Seats, is separated into two Chapters: Chapter I. treats of the Structure, and comprises the consideration of the introduction, building, repair, and removal of such seats: and Chapter II. of their Use and Occupation, whether in common or by a personal allotment by the authority of the Ordinary, either directly or indirectly; and the rights acquired thereby. Since the period in which the Law affecting this part of the subject gradually grew up, there has, especially of late, been a very great change in the circumstances; so that what might at one time have been proper, may be now inconvenient or objectionable, and some modification or reform will, no doubt, sooner or later be found desirable. The Act for the Abolition of Compulsory Church Rates will produce an effect tending in that direction. It is not within the scope of the present Work to consider the advantages and disadvantages of the present system. The Parson's Seat being subject to different considerations forms DIVISION **b.**

DIVISION **c.** is separated into two Chapters, of which Chapter I. treats of Seats held, or claimed to be held, under *Faculties* granted by the Ordinary to individuals and their

families or successors. The nature of Faculties, and their legal force, and the considerations which should guide the discretion of the Ordinary in making such grants, are comprised herein. The increasing inconveniences arising from such grants have been repeatedly noticed judicially, and no doubt, sooner or later, will lead to the abandonment of the system. Chapter II. treats of rights by *Prescription*; they arise from two separate sources, which have, however, not always in Law been kept so distinct as might have been desirable. The one is where a founder of a church, or other person, retained to himself, or built a specific part of the church, for his own use and that of his family and successors: and as such fact is not very frequently capable of absolute proof, it may (subject to certain requirements) be legally presumed to have been the case. The other is where, in default of any better title than use, it is presumed that such use commenced and continues under the authority of a Faculty, granted by the Ordinary, but no longer in existence. Under the head of *Prescription* are comprised the facts necessary to make a valid claim, what proof is requisite, where such questions are triable, and the ownership of the materials of the structure.

Next for consideration is PART C., which treats of—
a. Seats in Private Chapels and unconsecrated Buildings used for Divine Service; but respecting them very few legal points have been decided:—and **b.** Proprietary Chapels, a modern class of Building in which the use and control of the Seats differ little from that of places of Public Entertainment.

The remainder of the work, PART D., relates to the seats in Churches built under the authority of Acts of Parliament passed, at a modern date, with the object of relieving Spiritual Destitution, which in the course of time had risen to an alarming height. Special necessities require special treatment; but it often happens that what is introduced as a temporary measure, permanently remains. DIVISION **a.** relates to General Church-Building Acts, and **b.** to Churches built under Private Acts.

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ERRATA IN BOOK II.

Page 23, note (*g*).—Sieveking *v.* Evans & K.; should be, Sieveking & Evans *v.* Kingsford.

„ 33, „ (*s*).—Anon. p. 12; *Mod.* p. 401; should be, Anon., 12 *Mod.* p. 401.

„ 68, „ (*a*).—Reference to Comyn's *Digest*, N. 6, should be N. 116.

BOOK II.—LAW.

PLAN OF THE WORK.

Chapter.

I.	Early arrangement of Churches.
II.	Early names of Church Seats.
III.	Early use of word PEW.
IV.	Clergy Seats; Early Seats contd.
V.	Occupation of Seats.
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IX.	Separation of Sexes.
X.	Corporation and Special Pews; Payment; Locks.
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B. PARISH CHURCHES AND CHAPELS OF EASE	a. Ordinary Seats .. b. Parson's Seat. c. Private Seats
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C. PRIVATE CHAPELS	a. Private Chapels. b. Proprietary Chapels.
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D. CHURCHES under ACTS OF PARLIAMENT ..	a. General Acts. b. Private Acts.
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Book II. LAW.

CHURCH SEATS, OR PEWS.

The History and Law

OF

CHURCH SEATS, OR PEWS.

BOOK II.—LAW.

PART A.

CATHEDRALS.

PART A. CATHEDRALS.

1. A CATHEDRAL is the parish church of the whole diocese, because it is the church of the bishop, who has the cure of souls of the whole diocese; and though all of the diocese may receive the Sacrament or be married there, they are not bound to do so (*a*), nor are they liable for its repair, except in cases where all other funds fail. They have not, therefore, in a cathedral any parochial rights.

Cathedral is parish church of the diocese; but its use confers no parochial rights.

2. As to the seats in a cathedral, Dr. Todd, the Vicar-General of the diocese of Derry, said he could find nothing in the books of our law on the subject; but he referred to the work of Frances, *De Cathedralibus*, which, speaking of the nave of the cathedral, to which alone the laity should properly be limited, says to the effect that if there should be there any forms or benches for the laity, and it be

Seats in cathedral regulated by bishop; but objectionable.

(*a*) Frances, *De Cathedralibus*, p. 345.

PART A.
CATHEDRALS.

Seats are only
ex gratiâ.

Ought not to
be allotted;

but probably
allotment by
bishop not
questionable.

If parochial as
well as cathed-
ral, parochial
arrangements
follow.

On transfer of
parochial
rights from
cathedral to
new church,
claims for seats
to be examined.

necessary to regulate them, the regulation of them belongs to the bishop; but seats ought not to be permitted (*b*).

3. The laity can possess no right to seats or benches, which are only permitted, *ex gratiâ*, to be introduced (*c*).

4. It would appear, then, to be the law that seats in the nave of a cathedral ought not to be allocated at all, and that the nave should be free for all persons of the diocese; at all events, the inhabitants of the parish in which the cathedral is placed have no special rights in the cathedral, and if the bishop were to allocate a pew in a cathedral to any person in the diocese, it is probable that no one would have a right to question it (*d*).

5. When a church is parochial as well as cathedral (*i. e.* from its origin), the distribution of seats must be ordered, as in ordinary parish churches, by the churchwardens, but subject to the control of the ordinary. Non-parishioners have no rights therein (*e*).

6. Where any part of any cathedral has been accustomed to be used as a parochial church, the Church Building Commissioners, with consent of Ecclesiastical Commissioners (*f*), the bishop, dean and chapter, patron and incumbent, may transfer the rights, &c. to any new church in the parish of which that part of the cathedral had been held to be the parish church; and an examination into claims to seats by faculty or prescription, and an assignment to successful claimants is to take place in like manner as where the rights of an old parish church are transferred to a new building (*g*).

(*b*) Derry Cathedral, *Law T. Rep.*, 8 *N. S.* p. 863.

(*c*) Frances, *De Cath.*, p. 79.

(*d*) Derry Cathedral, *Law T. Rep.*, 8 *N. S.* p. 864.

(*e*) *Ibid.*

(*f*) The two bodies of Commissioners have been amalgamated by act of parliament, 19 & 20 Vict. c. 55.

(*g*) 8 & 9 Vict. c. 70, ss. 4 & 1 (1845).

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION a.

ORDINARY SEATS.

CHAPTER I.

STRUCTURE.

CAP. I.
STRUCTURE.

7. SOON after the conversion of the English Saxons there were several churches erected in the respective dioceses, to which the converts who lived remote from the cathedral repaired and made their offerings; but these were nearly equivalent to chapels of ease, and it is evident that the clergy were not fixed upon any parochial possessions, and as yet there was no such thing as fixed cures or tithes (*a*).

Earliest English churches like chapels of ease.

8. Now as kings founded cathedrals for the benefit of their whole dominions, so afterwards great men founded parochial churches for the convenience of themselves and their dependants, and churches and chapels were erected and a maintenance settled for the incumbent, the bounds of the parochial division being commonly the same with those of the founder's jurisdiction, or conterminous with a manor. Some foundations of this nature were as early as

Foundation of parish churches and parishes, very early.

(*a*) Collier's *Eccl. Hist. of Gt. Brit.*, Vol. I. p. 229; and Lathbury's Ed., Vol. I. p. 539 et seq.

CAP. I.
STRUCTURE.

Bishop had power over church, clergy, and revenues.

Endowment required.

Parishes settled prior to Norman conquest.

Rights and duties of parishioners acquired by custom.

Originally no seats in nave and aisles of churches.

the time of Justinian the Emperor; they are likewise mentioned by Bede about A.D. 700 (*b*).

9. Not only was the bishop's consecration of these rural churches to precede their use, but his consent was likewise necessary to their erection. His approbation of the priest who was to officiate was necessary; and, as he could not be admitted, so neither could he be ejected without the consent of the diocesan. The bishop's power went still further, and extended to the revenues, tithes and oblations with which they were endowed (*c*).

10. None of the auxiliary churches were allowed to be built before the settlement of a sufficient endowment for the maintenance of a priest. The endowments of those times consisted generally in a certain portion of land, in slaves to till the glebe, and in oblations made by the tenants within the precincts of the parish (*c*).

11. Thus in process of time the country became portioned out and existing parishes were subdivided. Before the reign of King Edward the Confessor the parochial divisions were so far advanced that every person might be traced to the parish to which he belonged; and the distinction of parishes, as they now stand, appears to have been settled before the Norman conquest (*c*).

12. By custom, the inhabitants of a parish acquired the right to attend the church and avail themselves of the spiritual advantages which had been thus provided for the parish; and, at the same time, the duty of keeping the building in repair and providing the necessaries for Divine service devolved and became a legal obligation upon them.

13. From the entire absence of mention by any early writers of seats for the congregation in church, or any representation of them in ancient paintings and illumina-

(*b*) Collier's *Eccles. Hist. of Gt. Brit.*, Vol. I. p. 229; and Lathbury's *Ed.*, Vol. I. p. 539 et seq.

(*c*) Collier's *Eccles. Hist. of Gt. Brit.*, Vol. I. pp. 230 & 231.

CAP. I.
STRUCTURE.

Originally no seats in nave and aisles of churches.

tions or any existing early example, there can be no doubt that there were formerly none such existing in that part of the building which was intended for the congregation (viz., the nave and aisles) for many centuries from the establishment of the Christian religion, and in fact until near the fifteenth century. The earlier records of them are more particularly referred to in Book I. of the present work.

14. When introduced they for some time were, with the exception of some held by prescription, merely stools or moveable seats. They are distinctly mentioned as moveable in the earliest case (1493) in which the subject appears in any legal proceedings. William Fitzwalter sued on a writ of trespass, for that the defendant had, with force and arms, broken and carried away his seat in the church. The court said that unless a man and his ancestors had been accustomed to have a fixed seat from time of prescription, it seemed that any one might remove the seat for his own ease and standing, for it was a common nuisance to all, because it hindered them from their standing (*d*). The court also said that it was a novel matter, and the judgment would serve as a precedent for all others.

Moveable seats at first introduced.

Case in 1493.

15. Degge (*e*) says that "if the seat be loose he that built it may remove it at his pleasure, as I conceive."

Loose seats removable by owner.

16. Prideaux says rather singularly that the first seats permitted to be used were moveable forms, for the ease of the parishioners to sit during those parts of the service for which kneeling or standing were directed by the ritual of the times (*f*).

For the ease of the parishioners.

(*d*) *Year Book*, 8 Hen. VII., 12. Issint, s'il & ses ancestres n'ont us dast tiel sedule là de temps de prescription, semble que chescun home purra prendre le sedule que est del esglise & ceo remove pur son ease & standing; car c'est al commun nusans de eux, car ils ne purront avoir leur standing pur tielx sedules, s. setes en el esglise.

(*e*) Degge's *Parson's Counsellor*, p. 210 (Pt. I. cap. 12).

(*f*) Tyrr. *Prid.*, p. 115.

CAP. I.
STRUCTURE.

Moveable seats said to have been the property of the incumbent.

But all proof wanting:
Therefore very doubtful.

Early fixed seats probably erected without authority.

17. It is stated by Kennett that these moveable seats were the property of the incumbent, and in all respects at his disposal; and they were frequently bequeathed by incumbents to their successors, or others as they thought fit (*g*).

18. And this statement has been followed by all subsequent writers without reference to a single other authority in corroboration. The writer of the present Work has not discovered any such authority or bequest. It seems highly improbable, from the reference in the case of Fitzwalter (above mentioned) to the novelty of the question, and private seats being then declared a nuisance to the rest of the parishioners, that the clergy would have been permitted to maintain them; nor, indeed, is it apparent what object they could have in wishing to do so. The examples stated by Kennett to occur in Wills of incumbents, may have been for clerical use in the chancel, as it is probable that many chancels were altogether destitute of, or inadequately provided with stalls.

19. Whether, at an early period, pews or fixed seats were put up with or without any authority, probably can never be ascertained with certainty, but the absence of early record of any such authority furnishes an exceedingly strong presumption that they did not possess it until a comparatively recent date. It would appear that as the ordinary has always possessed control over the church and matters connected with it, he naturally claimed authority over the seats when the subject was brought before him (*h*); and the Courts of Common Law have always acknowledged questions respecting seats to belong

(*g*) Kennett's *Paroch. Antiq. of Ambrosden*, p. 596.

(*h*) As in the Canons and Constitutions from the 13th century down-

CAP. I.
STRUCTURE.

exclusively to ecclesiastical jurisdiction, except in such cases as involved a Common Law right by prescription.

20. The necessity of obtaining from the ordinary his licence or faculty for all matters affecting the structure of a church or in its fittings or arrangements, before any alterations can legally be made, is now generally admitted, though perhaps the same strictness was not always observed: the erection or alteration of arrangement of seats is one of such matters.

A faculty is legally necessary, but not always obtained.

21. If the churchwardens erect or add new seats, they should have the consent of the parishioners, and a licence from the ordinary, although this is not required for occasional repairs (*i*).

Nor necessary for occasional repairs.

22. It is not to be maintained that every little alteration of a pew, where no private rights are infringed, requires a faculty, particularly where such alteration is for the accommodation of the parish (*j*).

Nor for trifling alterations.

23. Thus where an alteration was made with the concurrence of the churchwardens, and without any objection having been made by the parish, and the alteration was no disfigurement to the church, it was held that a faculty was not necessary (*k*). But the private assent of the bishop should always be obtained.

Nor in all cases.

24. Even for the exchange of a handsome new chalice for an old and poor one, the bishop's faculty should, in strictness, be obtained; though, practically, if the rector and vestry concur, such an authorization may be dispensed with.

But in strictness, even in small matters.

wards, given in Wilkin's *Concilia* and Spelman's *Concilia*; more particularly referred to in Book I. of this work.

(*i*) 2 *Inst.* p. 439; and in modern times, *Parham v. Templar*, 3 *Phill.* p. 527.

(*j*) *Parham v. Templar*, 3 *Phill.* p. 527.

(*k*) *Ibid.* p. 528.

CAP. I.
STRUCTURE.

Formerly
doubted where
no dispute;
even for
erection of
new pews.

So in John-
son's opinion,
but without
authority.

If with sanc-
tion of bishop
or archdeacon
faculty might
be perhaps
dispensed
with.

Clergyman
must not alter
without au-
thority.

Mode of pro-
ceeding to
obtain a
faculty for
erecting seats.

25. Though, formerly, doubt has been raised whether, where there is no dispute, the sanction of the ordinary is necessary. And it has been said, that if the incumbent, churchwardens and parishioners unanimously agree that more pews are necessary, and that they be fixed in such a place, it does not seem that there is any necessity for the ordinary's interposition (*l*).

26. Johnson (*m*), especially, adds that he can see no occasion for the ordinary's concerning himself in the case; for what need is there of a judge where there is no controversy? But, perhaps, Johnson's opinion when unfortified by authority must not receive too much weight.

27. And in a recent case the court said, it was most desirable that nothing should be done (in the way of alterations) by a clergyman in his church, without in the first instance obtaining the necessary legal sanction. If the private sanction of the bishop or archdeacon had been obtained prior to the alterations being made, the court might not have been disposed to insist upon a faculty being taken out; but a clergyman had no right whatever to make alterations on his own responsibility (*n*). In this case the alteration of seats occurred in the chancel, and therefore, probably, the concurrence of the churchwardens and parishioners was not alluded to.

28. The mode of proceeding is by a Decree citing the churchwardens and inhabitants generally of the parish, to show cause why a faculty should not be granted (*o*), and with an Intimation that in default of their not appearing,

(*l*) Ayl., *Parerg.*, p. 484.

(*m*) Johnson's *Clergy*. *Va. Me.*, Vol. I. p. 173.

(*n*) Sieveking & E. v. Kingsford, 15 *Law T. Rep.* p. 302, and *Law J. Rep.*, 36 *N. S.* p. 3.

(*o*) *Wilkinson v. Moss*, 2 *Lec.* p. 259; Ayl. *Parerg.*, p. 485.

or show good and sufficient cause to the contrary, the matter will be proceeded with in their absence.

CAP. I.
STRUCTURE.

29. In the event of there being any adverse appearance, the promovent has the choice of proceeding, either by *Plea and Proof*, or by *Summary Petition*; but the latter is the more convenient form (*p*).

Form of suit.

30. The court, however, is not obliged to grant a faculty in the terms of the intimation, but would grant it in terms agreeable to the law. Therefore, upon it being objected that in a Decree with Intimation, founding an application for faculty, there had been no limitation to the duration of the grant to the residence of the applicant in the parish, the court held that the objection was not good; but at the same time directed that in future the Intimation should run, to appropriate a pew to the applicant and his family while as continuing inhabitants of the parish (*q*).

Bishop not bound by the terms of original prayer or intimation.

31. It is usual to exhibit a minute of vestry concurring in the objects for which the faculty is desired to be obtained; but the court, in the exercise of its right of granting or withholding faculties, holds itself unfettered by the wishes of the majority of the parishioners in vestry: it may refuse the prayer of the whole parish joined together, or may grant, if it appears necessary, a prayer on the application of one against the rest (*r*).

Vestry minute usually produced; but court is unfettered.

32. But great attention will be paid to the wishes of the majority. The parishioners are, in the first instance, the best judges of the inconvenience and its remedies, and the court will not lightly presume that a majority would authorize or willingly incur an unnecessary expense (*s*).

Attention is paid to wishes of parish.

(*p*) Knapp *v.* Nicholl, 2 *Rob. Eccl. R.* p. 365.

(*q*) Partington *v.* Rect. of Barnes, 2 *Lee*, p. 354.

(*r*) Groves *v.* Rector of Hornsey, 1 *Hagg. C. R.* p. 189; Evans *v.* Slack & Others, *Law J. Rep.*, 38 *N. S.*, *Eccl.* p. 39.

(*s*) *Ibid.*

CAP. I.
STRUCTURE.

Disapproba-
tion of ma-
jority of
inhabitants is
not conclusive.

Discretion of
the court is
free.

Court considers
whether pro-
posed altera-
tion is for
practical
benefit.

If advantage-
ous, and with-
out cost to
parish, should
be granted.

33. The disapprobation of even a great majority of the inhabitants is not conclusive against any proposed plan ; for although it is a fact to which the Ecclesiastical Court pays great attention, it is certainly not the only circumstance to be considered ; for the majority may incline to unnecessary expense, against which the court ought to protect the minority, or it may object to necessary expense (*t*).

34. It is clear that the discretion of the court is free. The contrary doctrine would lead to monstrous consequences. As for example, supposing a church to be in a mean, shabby, and sordid condition, and yet secure from the actual inclemencies of the weather, and not in a condition in which the law would compel the parishioners to incur any expense respecting it, and some munificent person offered to put it in a decent and comely plight, but was opposed by the vestry ; the court could not be bound to refuse its consent (*t*).

35. The principle which the court has (so far as private interests will permit it to do so) to consider in the exercise of its discretion is, whether an alteration proposed is really for the practical benefit of the church and of the parishioners.

36. Where the enlargement of the church will add to its means of accommodation, to its beauty, and to the decency of the service, and will not cost the parishioners a farthing, the court cannot conscientiously do otherwise than grant a faculty for the purpose as prayed, although the churchwardens and vestry were unanimous in opposing it (*u*).

(*t*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 189 ; *Evans v. Slack & Ors.*, *Law J. Rep.*, 38 *N. S.*, *Ecc.* p. 39.

(*u*) *Harrison v. Swayne & Swayne* (by Sir Rob. J. Phillimore), unpubl.

37. The circumstance that no part of the expenses of a proposed improvement of a church will be defrayed by the parish, but that the whole will be defrayed by the rector who petitions for a faculty for the purpose of such improvement, has a most material bearing upon the law as to the effect of the opinion and wishes of the parishioners upon the discretion of the ordinary (*v*).

CAP. I.
STRUCTURE.

No part of expenses charged against the parish very material.

38. It would appear that a faculty might be granted for reseating at the instance of an individual and at his expense, supposing that the sittings were dilapidated, and taking into account that the vestry are no longer able to levy a compulsory rate for their repair; and even in opposition to the wishes of the parish by the churchwardens and vestry. Such an application was made by the rector; but he failed to prove an existing inconvenience, or that (as he alleged) many parishioners were deterred thereby from attending divine service, though some sittings might be actually uncomfortable; the application was dismissed by the Consistory Court of London (*w*).

Faculty might be granted to individual offering to pay expenses; even in opposition to the parish.

39. In the event of works being already done without authority, a faculty should be obtained to confirm such works.

Works without authority may be confirmed by faculty.

40. In a case of this kind, upon a doubt being raised as to the legal constitution of the vestry at which the work was ordered, the court held that that point was unimportant if the alterations themselves were proper and such as the ordinary ought to approve (*x*).

Legality of vestry meeting is unimportant.

41. The first point to which the court looks is, whether the disapprobation of the parish, on which the objection is

Wishes of parish ascertained through the vestry.

(*v*) *Harrison v. Swayne & Swayne* (by Sir Rob. J. Phillimore), unpubl.

(*w*) *Evans v. Slack & Others*, *Law J. Rep.*, 38 *N. S.*, *Ecc.* p. 41.

(*x*) *Thomas & Hughes v. Morris*, 1 *Add.* p. 472.

CAP. I.
STRUCTURE.

founded, is capable of being duly ascertained by the resolution of the vestry, or by the opinions or sentiments of others, who being prevented from attending there, have joined in the proceedings in the cause (*x*).

Notice of vestry need not be special.

42. If it can be shown that due notice of vestry was given, persons who did not choose to attend are not to plead ignorance, even if the notice was *general* and for *parochial purposes* only; but still more so, if *particular*, and the vestry was called for the object in question (*y*).

Majority obtained by canvass still admissible.

43. Where a majority of parishioners is in favour of erecting a gallery, this inference as to their wishes is not impeached by saying that it was an approbation obtained by personal canvass, and that one of those who formed the majority was active in the procurement of it, since, in all public business, some one individual must take the lead (*z*).

No objection if done fairly.

44. If, indeed, he does it corruptly—if he intimidates or bribes his fellow-parishioners, that may impeach a measure which has been effected by such means; but if he obtains a majority fairly by interference, the degree of activity and zeal which might have been used for that purpose will not affect the validity of the measure (*a*).

Attendance of strangers at committee does not necessarily vitiate its acts.

45. It was made an objection on the application for a faculty to build a gallery, that the meeting of the committee was attended by others who did not belong to it. It appeared that there were nine members present, of whom five were parish officers who, by custom, as was extremely proper, were standing members of all committees. It was

(*x*) *Evans v. Slack & S., Law J. Rep.*, 38 *N. S., Eccl.* p. 39; *Groves v. Rector of Hornsey*, 1 *Hagg. C. R.*, p. 190.

(*y*) *Ibid.* p. 191.

(*z*) *Ibid.* p. 193.

(*a*) *Ibid.* p. 193.

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held that if it appeared that the other persons who attended had controlled the proceedings by a fair majority, it would have vitiated the application; but it being proved that the resolution for a gallery was unanimous, their attendance was therefore of no consequence (*b*).

46. A faculty for the erection of a gallery in a church, notwithstanding the opposition of the vicar, was granted by the Consistory Court of Gloucester. The sentence was appealed against to the Court of Arches, and the decree of the Chancellor of Gloucester confirmed (*c*).

Vicar's opposition to faculty for gallery overruled.

47. The incumbent, however, may properly object to a plan which is generally inconvenient; which diminishes the accommodation in the church; which disfigures the building; which renders it dark and incommodious. In any case of this description, it is very proper he should make a representation to the Ordinary (*d*).

But he may sometimes properly oppose such a faculty.

48. At a visitation the vicar made a presentment that new pews were wanted, and that he and the churchwardens had formed a plan for regulating the seats; but that the vestry had negatived it; that a gallery which had been used by the Sunday School had been pulled down, which he desired might be re-erected; and he concluded by stating, that if the leading parishioners who wanted seats would bring forward any plan equally commodious with that which he suggested and which would not be likely to disfigure the church, he would readily concur with them (*e*).

Vicar may present the requirement for additional seats.

49. The vestry then agreed upon a plan for erecting a new gallery, applied to the ordinary for his faculty; and the only person who opposed it was the vicar (*f*).

Vestry apply for a faculty for a gallery.

(*b*) *Groves v. Rector of Hornsey*, 1 *Hagg. C. R.* p. 191.

(*c*) *Tattersall v. Knight*, 1 *Phill.* p. 237.

(*d*) *Ibid.* p. 233.

(*e*) *Ibid.* p. 232.

(*f*) *Ibid.* p. 234.

CAP. I.
STRUCTURE.

Reasons upon
which faculty
was granted.

50. The applicants proposed the erection of a gallery, which would be no detriment or inconvenience, but, on the contrary, ornamental; and alleged that five of the principal inhabitants, in consideration of having the front seats allotted to them (which the vestry agreed to) undertook to erect the seats for themselves, while the two rows behind were to be at parish expense and for the general accommodation of the inhabitants (*g*).

In spite of
vicar.

51. Upon this representation, and in spite of various objections by the vicar, the faculty was granted by the Consistory Court of Gloucester and confirmed by the Arches Court on appeal (*g*).

Application by
rector, opposed
by parish, may
be granted.

52. On the other hand it would appear that the application by a rector to reseat the church and refit the chancel without expense to the parish, though opposed by the churchwardens acting under the authority of vestry, might under some circumstances be granted (*h*).

Convenience
and comfort,
and gain of
seats con-
sidered.

53. The rector alleged that the present seats were inconveniently arranged; that the proposed alterations were for the comfort and convenience of those persons who attended the church; and that additional seats would be provided (*h*).

Faculty re-
fused for in-
sufficient proof.

54. The churchwardens denied the two former statements and alleged that no more seats were wanted. The court considered that there was a failure of proof of the rector's statements, and there was not sufficient ground to overrule the opposition of the parish (*h*).

Fact of seats
being dilapi-
dated has
much weight.

55. If it had appeared that the present sittings were dilapidated, that fact would have had great weight, especially since there was no longer power to levy compulsory church rates, and the court would listen with greater

(*g*) *Tattersall v. Knight*, 1 *Phill.*, p. 232 et seq.

(*h*) *Evans v. Slack & S.*, *Law J. Rep.*, 38 *N. S.*, *Eccl.* p. 41.

readiness than heretofore to any proposal on the part of an individual to improve the architecture or fittings at his own expense; and the consent of the parishioners would not have the weight it formerly had (*i*).

CAP. I.
STRUCTURE.

56. The fact of a plan for re-pewing being approved by the bishop and patrons, the expenses being offered to be paid by subscription; and additional accommodation being afforded to the parishioners, who stood in need of it, are reasons which, ordinarily, would strongly incline the court to grant a faculty for the purpose (*k*).

If the bishop and patron assent, &c., the court would incline to assent.

57. A plan of the proposed new pews should be prepared, clearly showing the situation and size of the pews to be substituted for those already appropriated by faculty or prescription; and should be annexed to the faculty for repairing (*l*).

A plan should be annexed to the faculty.

58. But if the plan be approved by the vestry it is not necessary that it should be annexed to the process (apparently meaning, the Decree with Intimation) (*m*).

But not to petition.

59. It being clearly shown that some addition is necessary, the only question for the court is, whether the proposed method is expedient; not whether it be the *most* expedient, as the faculty can regularly be only for the plan proposed (*n*).

Court to consider what is expedient.

60. And it is no objection to it, that other and better means might have been devised for the purpose, if evidence as to those plans being better has not been regularly brought before the court (*o*).

Nor necessarily that the plan is the best devisable.

61. In all cases where any dispute may arise, the ordi-

Ordinary is sole judge of

(*i*) *Evans v. Slack & S.*, *Law J. Rep.*, 38 *N. S.*, *Eccl.* p. 41.

(*k*) *Knapp & others v. Nicholl*, 2 *Robertson's Eccl. Rep.* p. 366.

(*l*) *Parham v. Templar*, 3 *Phill.* p. 515.

(*m*) *Tattersall v. Knight*, 1 *Phill.* p. 236.

(*n*) *Groves v. Rector of Hornsey*, 1 *Hagg. C. R.* p. 195.

(*o*) *Ibid.*

CAP. I.
STRUCTURE.

number and
place of seats.
Reasons affect-
ing discretion
of court.

Danger to the
fabric. Where
doubtful,
weight given
to opinion of
parish.

Darkening the
pews.

Hindrance to
divine service,
or any ob-
struction.

nary is sole judge whether more pews are necessary, and where they are to be placed (*p*).

62. There are various reasons which would hinder the court, in its discretion, from granting a faculty; especially if the proposed alteration would be likely to injure the building, or impede the light, or if it would be an obstruction or disfigure the building (*q*).

63. A faculty for a gallery was opposed on the ground of danger to the fabric of the church, which was one of considerable antiquity, and apparently not of firm architecture. Two surveyors said it would be safe; but another spoke differently, with this reserve, that, without other walls, it would endanger the church. It was held, that as it did not appear that it must necessarily be so constructed, the court was not to suppose that the parish would employ improper persons to spend their money, especially when the proposed plan had been approved of, by a majority of two to one (*q*).

64. Another ground of objection to granting a faculty for a gallery in a church was, that it would darken the pews. It appeared, however, to the court, that the church was competently lighted and that it was capable of receiving additional light from the form and glazing of the windows. The surveyors having no doubt on this point, and some of the parishioners being of the same opinion, the objection was held to be immaterial (*r*).

65. And whether the seats belong to the parish in general, or to such particular persons as prescribe for them, care is to be taken that they be not built so as to be a hindrance to divine service, or to any particular person

(*p*) Rogers' *Ecc. Law*, p. 170.

(*q*) Groves *v.* Rector of Hornsey, 1 *Hagg. C. R.* p. 195.

(*r*) *Ibid.* p. 196.

from partaking of the benefit of it, or be in any other way an obstruction to the good order of the church (*u*).

CAP. I.
STRUCTURE.

66. Pews and seats in a church ought to be regular, and of a moderate height, that the behaviour of the parishioners may the better be observed (*x*).

Seats to be a moderate height.

67. Therefore, if any seat be built so high as to hinder those that sit behind from well hearing the clergyman, or prevent the churchwardens from well observing the behaviour of those that sit in them, as they are bound to present if there be anything amiss; this is to be remedied on complaint to the ordinary, by taking the seat down to a proper height (*y*).

Seat too high to be reduced.

68. Where, under certain acts of parliament, there is any union of benefices, and the bishop has by faculty altered and re-adjusted the seats in the church, leaving (as required by the Act) half, at least, unappropriated; all the seats, whether appropriated or free under any new arrangement thus effected, shall be made as near as possible of the same size and general appearance (*z*).

On union of benefices and rearrangement of seats (half being free) the whole are to be alike.

69. As the Ecclesiastical Court is careful to preserve the symmetry and proportions of a church, it would be an objection to a proposed alteration, that these would be violated (*a*).

Symmetry of church to be preserved.

70. If an alteration of his seat, made by any individual, disfigures the church, or the churchwardens disapprove of it, or the parish object to it, the Ecclesiastical Court will enforce the restoration of the pew (*b*).

Seat raised to be reduced.

(*u*) Prid. p. 303.

(*a*) Dawtree's Case, T. T. 2 Jac. C. B.; Degge, Pt. I. cap. XII.

(*y*) Prid. p. 115; Degge, Pt. I. cap. XII.

(*z*) Union of Benefices Acts Amendment Act (33 & 34 Vict. c. 90), sect. 7.

(*a*) Groves v. Rect. of Hornsey, 1 Hagg. C. R. p. 195.

(*b*) Parham v. Templar, 3 Phill. p. 528.

CAP. I.
STRUCTURE.

Chancery can ordinarily by assent to its jurisdiction order restoration of altered church or restrain works.

Ecclesiastical Court will give an early opinion as to the law.

Country proceedings frequently irregular.

Such irregularities must be overlooked.

71. In a recent remarkable case, the Lord Chancellor, on appeal, held that the Court of Chancery had ordinarily no power to compel the restoration of a church to its original state, nor to grant an injunction to restrain the completion of the works; but as he thought the defendant (the incumbent) had acquiesced in respect to an injunction which had been granted by the Vice-Chancellor, that injunction would not be disturbed. But the plaintiff must undertake to apply to the proper Ecclesiastical Court for authority to complete the restoration of the church to its original state; and the words “without the authority of the bishop or archdeacon” should be added to the order for the injunction (*c*).

72. The Ecclesiastical Court is always anxious to give an early intimation of its opinion upon the law, more especially in parochial matters, in order that the parish may get into the right course, and that animosities may cease as soon as possible, since it seldom happens that the interest and excitement of a contest, are confined to the immediate litigants (*d*).

73. In the proceedings in the country courts, which are frequently very irregular, it is necessary to look to the substance of the proceedings rather than to the form of them, otherwise it would in most instances be impossible to administer justice between the parties (*e*). For it is the duty of the superior Ecclesiastical Courts to overlook irregularities in the country jurisdictions, and endeavour to get at the substantial merits of the case. There are, however, certain fundamental rules which it is impossible to neglect (*f*).

(*c*) *Cardinall v. Molyneux*, *Law Times*, 4 *N. S.* p. 607.

(*d*) *Blake v. Usborne*, 3 *Hagg.* p. 732.

(*e*) *Tattersall v. Knihgt*, 1 *Phill.* p. 233.

(*f*) *Parham v. Templar*, 3 *Phill.* p. 522.

74. The Ecclesiastical Courts have always retained in their hands the question as to the costs of litigants, and have very much refrained from laying down any rules for guidance. Consequently the costs of opposing a faculty are in the discretion of the court, and not matter of strict law. And one great object of the court in parish contests is to quiet them as soon as may be, hoping that moderation on its part, in not condemning the objecting parties in costs, may teach them moderation in their future intercourse with their neighbours and fellow-parishioners (*g*).

CAP. I.
STRUCTURE.

Question of costs in hands of court.

Costs of opposing a faculty are not matter of strict law.

75. And where there had been a difference of opinion in the parish, though the majority were in favour of a gallery, the court did not condemn the opposers in costs, although the witnesses were all of one family, as it did not wish to seem to imply that the opposition was not on public grounds (*h*).

Difference of opinion in the parish is considered.

76. The churchwardens, however, have a claim upon the court for its support, in the expenditure of money in the way directed by the parish and finally confirmed by the court, and therefore costs may fairly be given when the opposition has been carried on after the final approbation of the parishioners, particularly if it appears to have been factious or on private grounds (*i*).

Costs of opposition on private or factious grounds may be given.

77. A vicar opposed the grant of a faculty for the erection of a gallery, and the court decided against him, but gave no costs. The vicar appealed to the Court of Arches, which confirmed the decision of the court below, and said that it hardly thought that the original contest justified so lenient a sentence as that of the court below; the vicar should have been satisfied with that decision: the

Vicar opposing and appealing vexatiously, condemned in costs.

(*g*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 197.

(*h*) *Ibid.*

(*i*) *Ibid.* p. 196.

CAP. I.
STRUCTURE.

Vicar condemned in costs.

But (later) costs are of right and justice.

King's Bench granting prohibition cannot give costs in Ecclesiastical Court.

Churchwardens are to keep seats repaired.

Rector not chargeable.

Founder may prescribe to be exempt.

appeal had some appearance of being vexatious. Looking, however, to the relation in which the parties stood to each other, and considering how desirable it was that they should return to a good understanding, the court recommended the parishioners to waive pressing the costs (*h*). They refused to accede to the suggestion and costs were eventually given against the vicar (*l*).

78. But later it was said that costs are, in the opinion of the Judicial Committee of the Privy Council, a matter of right and justice, when a party in a suit succeeds; though formerly the rule in the Ecclesiastical Courts was not strict (*m*).

79. The Act 1 Will. IV. c. 21, s. 1, does not enable the Court of King's Bench, where a party has declared in prohibition and succeeded, to grant him his costs incurred in the Ecclesiastical Court (*n*).

80. It is the duty of churchwardens to keep the seats in the body of the church, equally with the church itself in repair (*o*), at the general charge of the parishioners, unless any particular person be chargeable to do it by prescription (*p*).

81. The rector or vicar is not chargeable to the repair of the body of the church or ornaments, being at the whole charge of repairing the chancel (*q*).

82. The founder of the church may prescribe that in respect of the foundation, he and his tenants have been freed from the charge of repairing the church (*r*).

(*h*) *Tattersall v. Knight*, 1 *Phill.* p. 237.

(*l*) *Ibid.* p. 238.

(*m*) *Knapp and others v. Parish of Willesden*, 2 *Roberts.* p. 369.

(*n*) *Tessimond v. Yardley*, 5 *B. & Adol.* p. 458.

(*o*) *Wood's Inst.* p. 94.

(*p*) *Degge*, pp. 163, 168.

(*q*) *Ibid.* p. 168.

(*r*) *Ibid.*

83. In like manner the inhabitants of a chapelry may prescribe that they have paid, time out of mind, a fixed sum, or repaired a part of the church; and have been freed from all other charges about the repair thereof (*s*). CAP. I.
STRUCTURE.
84. The repair of the church (and this may be said of the supply of necessities for divine worship), is a duty which the parishioners are bound by the common law of England to perform, not a voluntary act which they may decline at their discretion, for the law is absolutely imperative upon them (*t*). Or the inhabitants of a chapelry.
It is not a voluntary act of parishioners.
85. Lining and putting in cushions does not constitute repair, but is mere ornament. It is not usually done by the parish, but by each individual for his own convenience and comfort (*u*). Lining and cushions are not repair.
86. Where two parishes are united by act of parliament the repairs of the church must be done by the parishioners of both (*v*). United parishes jointly repair.
87. There seems formerly to have been doubt whether a foreigner (*i.e.*, a non-parishioner) holding lands in the parish was liable for such matters as bells, seats, and ornaments, or only for the repairs of the fabric; but Degge conceived him to be clearly liable (*x*). Former doubt of liability of non-parishioner.
88. But probably the Compulsory Church Rate Abolition Act (*y*), depriving the parishioners of power of raising money, has had the effect of putting an end to all such questions of liability. Affected by Church Rate Abolition Act.
89. Where city parishes are united under the Act of And exemption on union of benefices.

(*s*) Degge, p. 169; Hob. p. 67; 2 Rolle's *Abr.* p. 290 (*Prohib.* I. 2).

(*t*) Gosling *v.* Veley, 12 *Q. B.* p. 391.

(*u*) Pettman *v.* Bridger, 1 *Phill.* p. 331.

(*v*) Harman *v.* Renew, 3 *Salk.* 89; 4 & 5 Will. & Mary, c. 12; 23 & 24 Vict. c. 142.

(*x*) Degge, p. 205.

(*y*) 31 & 32 Vict. c. 109.

CAP. I.
STRUCTURE.

1860, the bishop may by faculty alter and readjust the seats ; and money expended and required for such purpose, and not provided by donation, is to be defrayed from funds provided by the Act (z).

Repair by parish has no effect on appropriation.

90. The fact of reparation by the churchwardens, on behalf of the parish, cannot oust the ordinary of his jurisdiction in the disposal of them (a).

Chancel seats repaired by repairer of chancel.

91. The seats in the chancel come under different considerations. The person who repairs the chancel repairs all seats there, except such as are held by prescriptive title or faculties, and of course these must be repaired by their owners.

Unless modified by special custom.

92. But whatever may be the general law and *primâ facie* presumption with regard to the repairs of the chancel, still it is liable to be controlled by special custom. In London such a custom exists generally, and although that may be on peculiar grounds, the inference from the authorities upon this point is that such custom may also exist in country parishes. And such custom was held good, after being found by a jury to exist, in the parish of Clare, in the diocese of Norwich (b).

Loose seat removable by owner.

93. In Degge's opinion if a seat be set loose in a church, the owner of the seat may remove it (c).

So if built by an individual without license may be pulled down by authority.

94. In the opinion of Watson and Degge, if any person presume to build a seat in the church, without license of the ordinary, or consent of the clergyman and churchwardens, or in an inconvenient place, or too high, it may be pulled down by the proper authority (d).

When erected are not

95. But it has been decided that pews already erected

(z) 23 & 24 Vict. c. 142, s. 28.

(a) *Greaterchey v. Beardsly*, 2 *Levinz*, p. 241.

(b) *Bishop of Ely v. Gibbons*, 4 *Hagg.* p. 162.

(c) Degge, p. 172.

(d) See Watson's *Clergy. Law*, p. 389; Degge, Pt. I. cap. XII.

cannot be pulled down without the consent of the minister and churchwardens, unless, after cause shown by a faculty or licence, from the ordinary (*e*).

CAP. I.
STRUCTURE.

removable
without
faculty.

96. And though the freehold of the church be in the parson, yet he cannot pull down any of the seats, either anciently or recently erected; but by license from the bishop, or by consent of the churchwardens (*f*).

Not by the
parson alone
though owning
the freehold.

97. No alterations should be made by a clergyman in his church without in the first instance obtaining the necessary legal sanction. If the private sanction of the bishop or archdeacon had been obtained prior to alterations which had been made, the court might not be disposed to insist upon a faculty being taken out; but a clergyman has no right whatever to make alterations on his own responsibility (*g*).

Private sanc-
tion of bishop
or archdeacon
might suffice.

98. In an old case it was held, that supposing that the churchwardens had the power of removing seats at their pleasure, yet even then they could not cut the timber of a pew. For it has been held, that the person who built the pew has an action of *trespass* against them for breaking it, even if it has been erected without license of the ordinary, and is a hindrance to the parishioners (*h*).

Church-
wardens
cutting the
woodwork
liable to action
of trespass.

99. Watson says, "I shall not question the law of this case, but this much is to be said against it, that the freehold being in another person, the annexing of a seat thereto seems to make the seat to be a part of the freehold, and so to be in him in whom is the freehold, and the use of the church; and if so, then the breaking of the timber could be no wrong to him that had no legal right in it, after it

Watson's
opinion.

(*e*) *Jarratt v. Steele*, 3 *Phill.* p. 170.

(*f*) *Degge*, Pt. I. cap. XII. p. 213.

(*g*) *Sieveking v. Evans & K.*, 15 *Law Times Rep.* p. 302.

(*h*) *Gilson v. Wright*, *Noy*, p. 108.

CAP. I.
STRUCTURE.

Trespass for
breaking a
seat claimed
by non-
parishioner.

Trespass is
held to lie.

Even where
the seat was
put up without
authority.

Breaking open
door and
altering pews
is a grave
offence.

was fastened to the freehold, and became as other seats, of common use, and at the disposal of the ordinary" (*i*).

100. In *Barrow v. Kew* (*h*), an action of trespass was brought for breaking a seat, wherein, as belonging to his house, the plaintiff, time out of mind, used to sit. The house was out of the parish, and upon that circumstance much discussion arose; but the propriety of the form of action does not appear to have been once questioned.

101. In the case of *Spooner v. Brewster* (*l*), the Court of King's Bench referring to the decision in the case of *Dawtree v. Dec*, that if the pew itself, which the party has put up, *be broken, trespass lies*, said that although that case had been somewhere doubted, it seemed consistent with law, and good sense, and it agreed with the decisions in 9 Edw. IV. c. 14, s. 8.

102. And as in *Gilson v. Wright* (*m*), *trespass* was held to lie against the churchwardens for removing the wood work of a pew, which had been put up by the plaintiff, who was a person without any authority, *à fortiori* might such action be maintained, for breaking and removing the materials of one held by a prescriptive title.

103. In a very recent case in the Arches Court (1861) where the churchwardens, against the expressed direction of the rector, and without authority from the bishop, broke open the church door, and with the assistance of workmen, altered the position of the pulpit, and pulled down and re-arranged certain of the seats in the church; the court held, most strongly, that all who had taken part in those

(*i*) Watson's *Clergy. Law*, p. 387.

(*h*) *Barrow v. Kew*, 2 *Keb.* p. 342; *Barrow v. Keen*, *Siderf.* p. 361, p. 4.

(*l*) *Spooner v. Brewster*, 3 *Bingh.* p. 138.

(*m*) *Gilson v. Wright*, *Noy*, p. 108.

proceedings had been guilty of a grave ecclesiastical offence (*n*).

CAP. I.
STRUCTURE.

104. And though the freehold of the churchyard is in the parson, trespass lies for the erection of a tombstone, against a person who wrongfully removes it from the churchyard and erases the inscription. For even the parson has no right to remove the tombstones, for the property in them remains in the persons who erected them (*o*).

And so trespass lies for removing a tombstone.

105. And Lord Coke held, that the heir may bring *trespass* against anyone who pulls down the coat armour, &c. of his ancestors, lawfully put up in the church (*p*). In the case of *Pym v. Gorwyn* (*q*), Chief Justice Coke cited the case of Lady Gray, who, at her husband's funeral, put up his arms and helmet in the church, and on the parson pulling them down she brought *trespass* which was held to lie.

Or for removing coat armour.

106. Though the freehold of the church be in the incumbent, and the seats be fixed to it; yet because the church is dedicated to the service of God, and is for the use of the inhabitants, and the seats are erected for their convenience in attending divine service, and such inhabitants are chargeable with the repairs of the seats. And, therefore, if any seat, though affixed to the church, be taken away by a stranger, the churchwardens, and not the parson, may have their action against the wrong-doer (*r*).

Action by churchwardens for removing seat and not by parson.

107. Ayliffe says (*s*), that if a seat is built in the body

Ayliffe's opinion contradictory.

(*n*) *Dewdney v. Good*, *Jurist*, 7 *N. S.* p. 637; and referred to as an authority by same court, *L. R.*, 3 *Ad. & Ec.* p. 124.

(*o*) *Spooner v. Brewster*, 3 *Bingh.* p. 138.

(*p*) *Mich.* 14 *Jac.* 1, *Brownl. & Gouldsb.* p. 45.

(*q*) *Pym v. Gorwyn*, *Moor*, p. 878.

(*r*) *Watson*, pp. 382, 387; citing *Year Book*, 8 *Hen. VII.* p. 12.

(*s*) Ayliffe's *Parerg.* p. 486.

CAP. I.
STRUCTURE.

Not removable by chapel-wardens without perpetual curate.

Lay impropriator removing seats in chancel ordered to restore them.

of the church without the bishop's consent, the church-wardens may pull it down; but he also says, that the freehold of the church being in the parson, when any person has fixed a seat in it, the seat then becomes parcel of the freehold, and consequently the right is in the parson. The two statements appear contradictory.

108. A chapelwarden of a parochial chapelry has not, by virtue of his office, any authority to enter the chapel and remove the pews without the consent of the perpetual curate (*t*).

109. The lay impropriator of the chancel forcibly broke into a church and pulled down certain pews in the chancel, and erected others in their place. A criminal suit against him was instituted by the vicar. At the hearing before the Exchequer Court the impropriator was admonished to pull down the seats he had erected, to replace those he had pulled down, and to reinstate the chancel as it was; a time was also fixed by the court for him to certify that he had complied with the sentence (*u*), and he was condemned in costs.

110. The remedy is by a suit in the Ecclesiastical Court, and in ordinary cases commences with a citation to show cause why a monition for the restoration of the seats to their original condition should not issue; but where the acts had been done by the incumbent the Consistory Court of London refused a motion for such a monition, and directed that proceedings should be taken under the Church Discipline Act (*x*), as for a criminal act. The case went to the Arches Court on appeal, when the judge, deciding the case on its merits, declined

(*t*) *Jones v. Ellis*, 2 I. & J. p. 265.

(*u*) *Jarratt v. Steele*, 3 *Phill.* p. 170.

(*x*) 3 & 4 Vict. c. 86.

to give an opinion whether such form of proceeding was or was not right (*y*).

CAP. I.
STRUCTURE.

111. Upon the suggestion of the court, and on consent of both sides, in order to save expense, the archdeacon, as a matter of favour to the court, visited the church, and made a report as to what alterations should, in his opinion, remain, and what things should be restored. The court gave sentence in accordance with the report, except in one particular (*z*).

112. The freehold of the church being in the parson, and in none other (*a*), he only, in the first instance, has the right to the possession of the key of the church (*b*), and the churchwardens have not, as against the incumbent of a church or chapel, a joint possession of it, so as to disable him from maintaining *trespass* against them for acts of violence, such as breaking and entering a chapel, and pulling down a pew in the body of it (*c*).

Parson only
has right to
key of church.

113. And even a perpetual curate of an augmented parochial chapelry has a sufficient possession whereon to maintain *trespass* against the churchwardens for breaking and entering the chapel and destroying the pews (*c*).

Perpetual
curate has
action of tres-
pass against
wardens for
destroying
pews.

114. But if a curate act contrary to the churchwardens in the removal of a pew, the curate may be proceeded against by the churchwardens; for the curate has no authority to alter the seats (*d*).

Curate re-
moving a pew
liable to action
by wardens.

115. But in respect to articles not affixed to the church it is different; thus, if a man take the organ out of a church the churchwardens have an action of *trespass*

Otherwise as to
an organ.

(*y*) Sieveking & E. v. Kingsford, *Law Journal Rep.*, 36 *N. S.* p. 4.

(*z*) *Ibid.* p. 3.

(*a*) *Frances v. Ley*, 2 *Jac.* p. 367.

(*b*) *Lee v. Matthews*, 3 *Hagg.* p. 173.

(*c*) *Jones v. Ellis and others*, 2 *Y. & J.* p. 265.

(*d*) *Parham v. Templar*, 3 *Phill.* p. 526.

CAP. I.
STRUCTURE.

Remedy for
pulling down
privately-
erected seats.

against him ; because the organ belongs to the parishioners, and not to the parson, and the parson cannot sue the taker in the Ecclesiastical Court (*f*).

116. If, however, a man, with the assent of the ordinary, doth set up a seat in *navi ecclesiæ* for himself, and another doth pull down or deface it, trespass *vi et armis* doth not lie against him, because the freehold is in the parson, and so the only remedy is in the Ecclesiastical Court (*g*).

Materials of
parish seats
belong to the
parish.

117. Seats legally put, and at the expense of the parishioners, although they be affixed to the parson's freehold, yet the materials do not, therefore, become his when taken down again, but belong to the parishioners ; for they, having a right to put them there, because of the common use which they have of that part of the church, have also a right to take them away again ; and the materials may be disposed of by the churchwardens in the same manner as the materials of the roof of the church, or any other part which they are bound to maintain (*h*).

Materials of
seats illegally
put up belong
to the parson.

118. If, on the other hand, any man presume to build any seat in church without legal authority, it may be pulled down by order of the bishop, or his archdeacon, and the materials belong to the parson (*i*), as they have been fixed to his freehold. The churchwardens cannot claim them for the parish, because they did *not put them up there* ; and the private person who built the seat having had *no right to put them there*, he can have no right, after having fixed them to the freehold, again to take them away (*k*).

(*f*) Rolle's *Abr.* p. 393.

(*g*) Watson, p. 386.

(*h*) Prid. p. 303 ; Degge, Pt. I. cap. XII. (5th ed. p. 172.)

(*i*) Degge, p. 172.

(*k*) Prid. p. 304.

119. Therefore, neither he nor the churchwardens can have anything to plead in bar of that right, which the minister has acquired to them, by having had them fixed to his freehold. For if a man wrongfully plant a tree in another man's soil by putting it there he makes it part of the freehold, and therefore whenever it is again removed it belongs to him who owns the land (*l*).

CAP. I.
STRUCTURE.

In right of his
freehold.

120. The door of a pew hung upon hinges, removable without interfering with the staple, is a chattel, and not part of the freehold (*m*).

A pew door is
a chattel.

121. But the lock and key to the door of the church must be taken as part of the building, just as in an ordinary house (*n*).

Church lock
and key are
part of the
building.

122. Other considerations affect the materials of demolished pews held under faculty or prescription (*o*).

(*l*) Prid. p. 304.

(*m*) Mant v. Collins, 10 *Jur.* p. 30; 15 *L. J., Q. B.* p. 248.

(*n*) Chapman v. Jones, *L. R.*, 4 *Ex.* p. 282.

(*o*) See *post*.

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION a.

ORDINARY SEATS.

CHAPTER II.

CAP. II.
USE.

USE.

Use of seats.

123. WE now come to the consideration of the use of the seats when put up, but, as heretofore, reserving to a subsequent chapter all matters connected with seats held, or claimed to be held, by virtue of faculty or prescription.

Nor allotted
before the
Reformation.

124. It was said by the learned antiquary Bishop White Kennett, that “Before the Age of our Reformation no Seats were allow’d nor any different apartment in a Church assign’d to distinct Inhabitants but the whole Nave or Body of the Church was common, and the whole Assembly, in the more becoming postures of kneeling or standing, were promiscuous and intermixt” (*a*).

Wills of in-
cumbents
bequeathing
the seats.

125. He is followed by Johnson who says (and Burns after him), that “many wills of incumbents are to be seen whereby they did of old bequeath the seats in the church to their successors or others as they thought fit” (*b*). Athon and Lindwood are silent in the case. The common law books mention but two or three cases before this time and those relating to the chancels and seats of persons of great quality.

Fixed seats
were intro-
duced at
earlier date.

126. Subsequent studies of archæologists, however, leave no doubt that the introduction of fixed seats took place at a period clearly antecedent to the Reformation, though it

(*a*) Kennett’s *Antiq. of Ambrosden*, p. 596.

(*b*) Johnson, Vol. I. p. 178.

is highly probable that their use was by no means universal even at that date. The statement of Johnson as to the moveable seats being frequently the property of and bequeathed by the incumbents remains uncorroborated.

CAP. II.
USE.

127. In a case in the third year of Queen Anne (1706) the reporter adds:—"Likewise it was said that anciently there were no pews in churches but only forms" (*c*).

Forms were earlier.

128. The rare references which occur as to the use of church seats at an earlier period probably relate to chancel seats (*d*), or moveable seats, as is more particularly apparent from the other part of this work (*e*).

Early mention usually refers to chancel.

129. By the general law the soil and freehold of the church and churchyard belong to the parson. For this reason the parson alone can give a licence for burying in the church (*f*). We must see how far this general right of the parishioners is affected by the freehold right of the parson, such as it is.

Freehold of the church is in the parson.

130. Sir John Nicholl does not appear to have had a high idea of the parson's freehold, for he says, "The freehold of the chancel may be in the rector, lay or spiritual, as the freehold of the church is, by *a sort of legal fiction*, in the incumbent" (*g*).

By a sort of legal fiction.

131. It is said, that though the freehold of the church is in the incumbent, yet the use of the church to hear divine service is in the parishioners (*h*), who have, by the general law and of *common* right, a *common* property in the pews of the church. These pews are for the use in

Use of church is in the parishioners in common.

(*c*) 6 Mod. p. 231.

(*d*) As in Wyche's case, the chancel only is referred to. *Year Book*, 9 Edw. IV., Ed. 1597, p. 14.

(*e*) Also Johns. p. 175; Kennett, p. 596; Burn's *Eccl. Law*, p. 358, citing the above.

(*f*) Francis v. Law, 2 Cro. p. 367; Day v. Beddingfield and others, *Noy*, p. 104; 2 Rol. p. 337, c. 10.

(*g*) Rich v. Bushnell, 4 Hagg. p. 170.

(*h*) 12 Coke's Rep. p. 105.

CAP. II.
USE.

common of the parishioners, who are *all* entitled to be seated, orderly and conveniently, so as best to provide for the accommodation of *all* (*i*).

All are entitled to seats.

132. Every parishioner has a right to be seated, but not to a pew (*k*).

For convenience at divine service.

133. The seats are for the use of the parishioners to sit, kneel, and stand in, for the hearing of the word of God read and preached, and joining in the prayers and other religious duties with the other parishioners (*l*).

And for their general accommodation.

134. The object to be attained is the general accommodation of *all* the parishioners (*m*).

135. And this distinction was distinctly held in view by the framers of the original Church Building Acts, for although allotments and rents are legalized, it is only till such time as a sufficient endowment can be obtained and no longer.

At first no seat permitted in the body of the church.

136. Thus it was held, in the earliest known case bearing upon the subject of church seats, that, unless by prescription, a seat in the body of the church could not be permitted, for the church is common for everyone, wherefore it is not in reason that one should have a seat and that two should stand; for no place is more for one than for another, and that a private seat was a common nuisance to all, because it hindered their right of standing in the church (*n*).

Practice of arrangement by bishop has since arisen for maintenance of order.

137. Though thus void of all ancient foundation, a system, based upon the reasonable claim and duty of the bishop, as ordinary, to preserve order has gradually grown up, by

(*i*) *Fuller v. Lane*, 2 *Add.* p. 425; *Butt v. Jones*, 2 *Hagg.* p. 424; *Ayl. Par.* p. 484.

(*k*) *Londonderry Cath.*, *L. J.*, 8 *N. S.* p. 861.

(*l*) *Degge*, p. 210; *Watson*, p. 382.

(*m*) *Report of Comrs.* 1832, 12mo. ed. p. 48; *Fuller v. Lane*, 2 *Add.* p. 425.

(*n*) *Year Book*, 8 Henry VII. p. 12.

which he proceeds to arrange the church in such manner as the service of God may best be celebrated and that there be no contention in the church (*o*). And therefore the authority of the ordinary (that is, of the bishop or person acting for him [*p*]), extends *primâ facie* over all pews.

CAP. II.
USE.

Ordinary's
authority.

138. Also, perhaps, as having the general cure of souls within his diocese (*q*).

And as having
cure through-
out diocese.

139. Therefore, if a question arises concerning a seat in the body of the church, the ordinary shall decide it (*r*), because the freehold is in the parson, and the place is dedicated and consecrated to the service of God.

Disputes to be
decided by
him.

140. And all controversies concerning seats in a church are determinable before the ordinary, except where a person claims a seat by prescription (*s*).

Unless claim
be by pre-
scription.

141. In Brabin's case the bishop had displaced him and given seat to Trediman by faculty. He applied for prohibition which was granted, 1st, because an alleged custom that twelve parishioners allotted seats was a reasonable custom (*t*); and 2nd, that the faculty was to Trediman and his heirs, and not limited to residence in parish. Justice Houghton said that if there had not been an immemorial custom for the churchwardens to repair and make new seats no prohibition could have been granted "for ancient custom *ne poet vaer*" as to new seats (*u*).

Rolle's report
of Brabin's
case.
(Doubtful in
part.)

(*o*) 12 Coke's *Rep.* p. 105.

(*p*) Co. *Litt.* 96 a.

(*q*) Ayl. *Par.* p. 484.

(*r*) Corven's case, 12 Coke's *Rep.* p. 105.

(*s*) Anon. p. 12; *Mod.* p. 401; *Eaton v. Ayliffe, Hetley*, p. 95; *Hobart*, p. 69.

(*t*) Another report of the same case says that the prohibition was granted on other grounds; 1st, because the grant to a man and his heirs was bad; and 2nd, because excommunication was too great a punishment for an interference with the bishop's nominee (*Popham*, p. 140).

(*u*) 2 Rolle's *Rep.* p. 24.

CAP. II.
USE.

Common law
not to meddle
in church
seats;

but only the
Ecclesiastical
Courts, if no
contrary
custom.

Nor can
Chancery con-
trol the Eccle-
siastical
Courts.

On union of
benefices half
seats as re-
adjusted can be
allotted.

Bishop's juris-
diction extends
to chapels of
case.

142. Ayliffe says that in a case respecting a seat in the body of the church, prohibition was refused, "For (said Houghton, referring to the case in the Year Book, 8 Hen. VII., 12), this disposition of pews in the church belongs to the order and discretion of the ordinary." And the rest of the judges did all of them say that they would not meddle with the deciding of such controversies about seats in the church, but would leave the same to whom it did more properly belong. And thus the Ecclesiastical Court has jurisdiction and power to dispose of pews and seats in the body of the church, notwithstanding the church is the parson's freehold; if there be no custom to the contrary (*v*).

143. And in a recent case Lord Chancellor Westbury intimated that his court could make no order as to works to be done in the church; but said that the plaintiff must apply to the proper Ecclesiastical Court for authority to restore the church to its original state, and that a former order of the Vice-Chancellor must be modified, by adding a requirement that the authority of the bishop or archdeacon should be obtained before any works in the church were effected (*x*).

144. Where, under certain acts of parliament, there is any union of benefices, and the bishop has by faculty altered and re-adjusted the seats and the appropriation thereof in the church of the benefice, at least one-half of the sittings shall be left unappropriated (*y*). The power of allotment by the bishop is thus limited to the other half of the seats.

145. And in like manner as the disposal of seats in the mother church belongs to the ordinary, he has authority

(*v*) Ayliffe's *Par.* p. 485.

(*x*) *Cardinal v. Molyneux*, *L. T.*, 4 *N. S.* p. 607.

(*y*) Union of Benefices Acts Amendment Act (34 & 35 Vict. c. 90), sect. 7.

as to seats in a chapel of ease belonging to the mother church (*z*).

CAP. II.
USE.

146. But an Ecclesiastical Court cannot entertain a suit as to the allotment of seats in a place of divine worship unless such place is a legally-consecrated building (*a*).

But not in an unconsecrated building.

147. In a suit for perturbation of seat, objection was taken to the jurisdiction of the Ecclesiastical Court on the ground that the church had been pulled down and rebuilt, and that on such rebuilding there had been no consecration. The Privy Council in deciding the case (upon other grounds) gave no judicial decision whether, if a church be rebuilt upon the old lines of foundation, including within it the same originally consecrated ground and no more, such church does need re-consecration; and wished it to be distinctly understood that the court by no means intended to recognize or sanction such doctrine (*b*).

Church rebuilt in sections, but no further consecration, does not stop Ecclesiastical Court.

148. No action at common law can be maintained for a disturbance of a pew which is not annexed to any house, if it be in the body of the church. But it has been suggested that a chancel is different, as it may be the freehold of an individual (*c*).

No action lies for disturbance except under prescriptive right.

149. And the mere right to sit in a particular pew is not such a temporal right as that, in respect of it, an action at common law is maintainable (*d*). And the disturbance is matter for ecclesiastical censure only (*e*).

Matter for ecclesiastical censure.

150. The existing rules, upon which such controversies are now decided, have simply grown up. The general law, with respect to pews and sittings in churches, was,

The law was little understood.

(*z*) *Lee v. Daniel*, 12 *Mod.* p. 228.

(*a*) *Battiscombe v. Eve*, *Jur.*, 9 *N. S.* p. 210; *L. J.*, 7 *N. S.* p. 697.

(*b*) *Parker v. Leach*, 4 *Moore's P. C. Rep.*, *N. S.* p. 193.

(*c*) *Mainwaring v. Giles*, 5 *B. & A.* p. 361.

(*d*) *Ibid.* p. 362.

(*e*) *Ibid.* p. 361.

CAP. II.
USE.

Law still in unsatisfactory state.

As to seats in chancel, especially doubtful.

Term *chancel* here not applied to a side chancel or chapel.

Church in act of parliament includes *chancel*.

Appropriation of chancel seats claimed by rector.

for a long time, little understood; and erroneous notions on this subject are even now current, at least in many parts of the country, and have led to much practical inconvenience (*f*). And, indeed, the law on this subject is in some respects still in an unsatisfactory state.

151. Considerable doubt existed as to the appropriation of seats in the chancel, other than those used by persons engaged or assisting in the performance of divine service; in fact such other seats in the chancel are a comparatively recent introduction.

152. It may be well here, in order to avoid possible mistakes, to refer to the fact that the term chancel was formerly not unfrequently used with a want of technicality; when “a chancel” is spoken of it often refers to a chapel or aisle on one side of the actual chancel, and consequently is subject to totally different considerations.

153. So, although, in strictness, the word “church” in ecclesiastical language is generally understood to mean the body of the church, yet where it occurred in a modern act of parliament (*g*), the Arches Court held that the word was used by the legislature in its usual and common sense of including the chancel and the whole building, and that manifest inconvenience would result from any other construction (*h*).

154. The right of appropriation of seats in the chancel was at first claimed by the rector on the ground that he repaired, and was compellable to repair, that part of the church. It is distinctly laid down that the charge of repairing the chancel is upon the rector, whether he be appropriator, impropiator, or instituted rector of the

(*f*) *Fuller v. Lane*, 2 *Add.* p. 425.

(*g*) 5 *Gco. IV.* c. 36.

(*h*) *Rippin & W. v. Bastin*, *L. Journal Rep.*, 38 *N. S.*, *Eccles.* p. 37.

parish (*i*). In some churches, however, the vicar is by special composition bound to repair, and then he is said to have the freehold of the chancel, as well as of the body of the church and churchyard (*h*). The person, therefore, who repairs the chancel repairs all the seats there, except such (if any) as are held by faculty or prescription, which must, of course, be repaired by their owners.

CAP. II.
USE.Repairs of
chancel.
Repairs of
seats there.

155. In an early case it was distinctly laid down that the seats in the chancel are properly in the disposal of the rector or parson; but that it would seem that a parishioner may prescribe for a seat there (*l*).

Seats in
chancel may
be prescribed
for.

156. On this ground of repair Prideaux considers that if the ordinary do not, in exercise of his right, interfere in the disposal of seats in the chancel, the parson may dispose of them in the same manner as the churchwardens do those in the body of the church; but if any controversy arise, there is an appeal to the bishop from the one as from the other (*m*). But quære? who is to appeal to the bishop; it is not suggested that anyone has a right to a seat in the chancel unless by prescription, or (possibly) by faculty; and it is declared that the use of the chancel is for the performance of divine service.

Prideaux
thinks rector's
right inde-
pendent of
the bishop.

But quære?

157. And on the same ground Ayliffe, holding a stronger opinion, says that the ordinary has no right to place anyone there, and that the rector shall have the chancel to himself in a peculiar manner. He does not, however, suggest that the rector has any right to dispose of the seats there (*n*).

Perhaps Ay-
liffe, also.

158. The exception is in the City of London, where London claims to be an ex-

(*i*) *Veley v. Burder*, 12 *A. & E.* p. 302.

(*h*) *Prid.* p. 330.

(*l*) *Hall v. Ellis, Noy*, p. 133.

(*m*) *Tyrrwhitt's Prid.* p. 119.

(*n*) *Ayliffe's Parerg.* p. 486.

CAP. II.
USE.ception to
general rule.

by custom the parish is bound to repair the chancel; the churchwardens, probably in consequence of this, claim the right of independent appropriation (*o*). But no such question seems ever to have been tried. No usage can give them a title to do this exclusive of the bishop. For when any controversy arises, they have nowhere else to go but to the bishop for a decision of it (*p*), and the claim is treated as non-existent in certain modern acts of parliament (*q*).

But Gibson
opposed to
Ayliffe;and Queen's
Bench later.Rector has
chief pew in
chancel, and
ordinary ap-
points others.Vicar's per-
sonal claim.But much
doubt still
entertained.

159. Bishop Gibson's opinion is directly contrary to that of Ayliffe. He says that the seats in the chancel are under the disposition of the ordinary in like manner as those in the body of the church (*r*). And more recently there are dicta in the Queen's Bench to the same effect (*s*).

160. More modern decisions, however, lay down that the general rule is said to be that the rector is entitled to the principal pew in the chancel, but that the ordinary may grant permission to other persons to have pews there (*t*).

161. Johnson says that in some places, where the parson repairs the chancel, the vicar, by prescription, claims the right of a seat for his family, and also of giving leave to bury there, taking a fee upon the burial of any corpse (*u*).

162. The Commission on the Ecclesiastical Courts, however, reported that the law has not been settled with certainty, and great inconvenience has been experienced from the doubts continued to be entertained. That some are of

(*o*) Tyrr. *Prid.* p. 119.

(*p*) *Prid.* p. 302.

(*q*) 18 & 19 Vict. c. 127; 23 & 24 Vict. c. 142.

(*r*) Gibson's *Co.* p. 224.

(*s*) Clifford v. Wicks, 1 B. & A. p. 498; Morgan v. Curtis, 3 M. & Ry. p. 389.

(*t*) Clifford v. Wicks, 1 B. & A. p. 506.

(*u*) 1 Johnson's *Cl. Va. me.*, p. 269, followed in 1 Burn's *Ecc. Law*, p. 363.

opinion that the churchwardens have no authority over pews in the chancel; while it has been said that the rector, whether spiritual or lay, has in the first instance, at least, a right to dispose of the seats; claims have also been set up on behalf of the vicar, and the extent of the ordinary's authority to remedy any undue arrangement, with regard to such pews, has been questioned (*x*).

CAP. II.
USE.

Vicar's claim
doubted.

163. It does not appear upon what ground this part of the church intended for a special purpose should be appropriated to the general seating of the parishioners, and thus be converted to the same purpose as the body of the church.

Grounds for
any appropriation
in chancel
not apparent.

164. Nor does it appear why the rector's family, who can have no ecclesiastical functions to perform, should have a preference over the rest of the parishioners. But, as matters stand, such is held to be the case, and all the other seats in the chancel are now generally supposed to be in all respects subject to the appropriation by the churchwardens under the bishop and under the same conditions as the seats in the body of the church.

Nor for preference
of rector's
family.

165. The earliest record of any systematic arrangement of seats by the ordinary's authority, appears at the beginning of the seventeenth century, when in a few instances the bishop granted a faculty for the purpose; showing that it could be only done by the exercise of an (actual, assumed, or arrogated) authority formally granted in very few individual cases. No general rule as to the disposition of the seats amongst the parishioners in order of rank appears to have been laid down until the year 1825, when, in the course of his judgment in the case of *Fuller v. Lane*, Sir John Nicholl, then Dean of the Arches, said (*y*):—

Commence-
ment of syste-
matic arrange-
ment.

“The parishioners have a claim to be seated according

Preference to
rank and

(*x*) *Rep. of Com. on Eccl. Cts.* p. 130.

(*y*) *Fuller v. Lane*, 2 *Add.* p. 426.

CAP. II.
USE.

station, first
ruled in 1825.

to their rank and station ; but the churchwardens are **not**, in providing for this, to overlook the claims of all the parishioners to be seated, if sittings can be afforded them. Accordingly they are bound in particular not to accommodate the higher classes beyond their real wants, to the exclusion of their poorer neighbours, who are equally entitled to accommodation with the rest, though they are not entitled to equal accommodation, supposing the seats to be not all equally convenient.”

No authority
given.

166. The question, however, before the court for decision did not relate to the general arrangement of the parishioners, but was a contest with respect to the application of an individual for a faculty to secure to him and his family a particular pew. The observations of the judge, above quoted, do not therefore carry the weight of a judgment. It will be noted that the judge referred to no authority for his opinion, and a careful search has failed to discover any. If no authority be found, it would seem that the matter is thrown back to the ancient decisions that the church is common for every one (z). Such an arrangement as was contemplated by the judge in 1825 was perhaps not unsuited to the ideas of the time; but now, and especially where there is a rapidly-increasing population, very different considerations operate.

Reasons for
doubt of ordi-
nary's power.

If existing
must be exer-
cised with
discretion.

167. It may be doubted whether the ordinary has the power to deprive the parishioners at large of their equal rights in the church by allotting a fixed part to certain individuals or families to the exclusion, so far, of all the rest of the parishioners. And supposing that the claim to such power be maintainable, there seems no reason to doubt that the exercise of it must depend upon the discretion of the ordinary; the churchwardens are bound to

(z) *Year Book*, 8 Henry VII. p. 12.

exercise their authority with discretion (*a*), and the same rule would apply to the bishop; and it has never been suggested that he is bound in its exercise to favour an applicant in preference to the parishioners generally.

CAP. II.
USE.

168. But, since the case of *Fuller v. Lane* (*b*), ordinaries have been accustomed to assume, as an established rule of law, that it is their duty to allot seats to parishioners according to the rank and station of the applicants; but the remarks of the judge, in that case, even if they had had the force of a judgment, can scarcely be taken to favour an allotment to some parishioners to the entire exclusion of others.

Present practice of doubtful force.

169. The authority actually exercised by the ordinary in the use of the seats is performed by means of the churchwardens, as a matter of convenience, and they place the parishioners in the different pews (*c*).

Bishop's authority usually exercised through the churchwardens.

170. As the churchwardens have the care of the church and of all the seats therein, they must see that good order be preserved, and no disturbance or contention be made about them in the house of God; but (*Prideaux* adds) that every man regularly take that seat and that place in it to which he has a right, whether it be by prescription, by order of the bishop, or by their own permission (*d*).

Duty of wardens to keep good order in use of the seats.

171. *Watson*, on the other hand, shows the inconvenience which might arise from the plan of allotment. If merely the best and upper seats be appropriated, persons of greater quality could then only be seated in inferior and remote parts of the church, the best seats by such means being taken up, it may be by only inferior tenants

Inconvenience of appropriating best seats only.

(*a*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 33.

(*b*) *Fuller v. Lane*, 2 *Add.* p. 426.

(*c*) *Drury v. Harrison*, cited in *Parham v. Templar*, 3 *Phill.* p. 516; *Morgan v. Curtis*, 3 *M. & Ry.* p. 349; *Wood's Inst.* p. 94.

(*d*) *Tyrr. Prid.* p. 103. No authority is given for this statement.

CAP. II.
USE.

or servants living in the houses, to which the pews are said to belong (*f*).

Wardens should prevent improper occupancy.

172. The churchwardens should take good care to prevent improper occupancy, and if they do not attend to this they are guilty of a breach of their duty (*g*).

Limitation of authority where all seats moveable.

173. The doctrine that the general disposal of the seats appertains to the churchwardens, perhaps, must receive some limitation where the seats are all moveable or where chairs alone are in use (*h*).

Wardens act only as officers of the bishop.

174. The common law never meddles with these matters, except where a seat is claimed by prescription. All other seats it wholly leaves to the disposing and ordering of the bishop; and so long as he has the decision of all controversies about them, this will always be a proof of his right in the matter. Therefore, whatsoever usage the churchwardens may pretend to for the disposal of the seats in any church, they must be understood to do this solely by the authority of the bishop, as officers acting under him (*i*).

Doubt if they can have the right independent of the bishop.

175. It seems doubtful whether the churchwardens have, under *any* circumstances, a right to dispose of seats independent of the ordinary. Dr. Prideaux held that how much soever it may have been the usage in any place for the churchwardens to dispose of the seats in the church, it can never amount to a prescription to exclude the bishop; because, they being officers under him, whatever they do in this kind, must always be supposed to be done by an authority derived from him, either positively granted, as by his faculty, or else tacitly allowed (*k*).

(*f*) Watson, p. 392.

(*g*) Walter *v.* Gunner & Drury, 1 *Hagg. C. R.* p. 317.

(*h*) Ritchings *v.* Cordingley, *L. R.*, 3 *Adm. & Ec.* p. 119.

(*i*) *Prid.* p. 307; *Degge*, p. 213.

(*k*) *Prid.* p. 302.

176. In a suit in the Consistory Court of London in 1598, brought by the wives of two parishioners against churchwardens, the latter, in the name of themselves and the parishioners, challenged that to themselves the right belonged of placing and displacing of pews. Dr. Stanhope, the Judge, said:—"I thinck itt fitt, when there is occasion, that the Ordinarie be alwaies therein consulted, for continuance of his Jurisdiction, and for redressing of any whoe shall find them selves agreved" (*l*).

CAP. II.
USE.

Should consult
the ordinary

177. In Rolle's Report of the case of *Brabin v. Trediman*, it is stated that a prohibition, even after an appeal to the High Court of Delegates, was granted for two reasons:—

Whether
wardens can
prescribe to
allot the
seats inde-
pendent of the
bishop.

1. Custom for the two churchwardens, with assent of twelve parishioners, to appoint for the appropriation of seats was reasonable.

In favour.

2. That the grant by the bishop to his nominee was to him and his heirs, and not so long as he inhabits the parish (*m*).

178. It is stated in Gibson's Codex, on the authority of this case in Rolle's Reports, that a custom, time out of mind, of disposing seats by the churchwardens and major part of the parish, or by twelve or any particular number of the parishioners, is a good custom; and that if the ordinary interpose, a prohibition will be granted (*n*). He also refers to the case of *Colebach & others v. Baldwyn*, but that only goes to the extent that such a custom might be good, but not that it is good. And Watson cites this case as authority for his statement that the

Custom held
by Gibson to
be good.

Cited by Wat-
son.

(*l*) London, *Vicar-General's Books*, Vol. VIII. fol. lxi.

(*m*) *Brabin v. Trediman*, 2 *Rolle's Rep.* p. 24.

(*n*) *Gibson's Co.*, p. 222; *Colebach & others v. Baldwyn*, 2 *Lutwyche*, p. 1032.

CAP. II.
USE.

Grounds of
prohibition
as stated in
another report.

churchwardens may have the disposal of the seats independent of the ordinary (*o*); and Burn cites Watson (*p*).

179. The report of the same case by another reporter states the ground upon which the prohibition was granted very differently:—"Prohibition granted because the grant to man and heirs is not good, and because excommunication was too great a punishment for those who interfered with bishop's appointee." (*q*). It seems probable that of the grounds for prohibition as stated in these two reports, the latter is correct as being in accordance with other decisions.

Contrary decision: parishioners cannot oust ordinary.

180. But the opinion that the churchwardens have no independent authority rests on much firmer ground. In a case where the churchwardens prayed a prohibition of the Bishop's Court in the disposal of seats,—alleging that as they repaired they had a prescriptive right to deal with them,—the court refused the prohibition, saying that: "Of common right the ordinary hath the disposal of all seats in the church, and of common right the parishioners ought to repair them. Then what have the parishioners done here to oust the ordinary of his jurisdiction? They have only said that they have repaired the seats at the parish charge, for which they have the easement of sitting in them, according to the disposal of the ordinary" (*r*).

Nor jostle out his authority.

181. But where a prohibition was prayed, on a suggestion that time out of mind there had been a custom that the churchwardens, with the major part of the parishioners, may order the seats in the church, Chief Justice North said:—"A prohibition shall not be granted

(*o*) Watson, p. 389.

(*p*) Burn's *Ecc. Law*, 9th ed., p. 359 a.

(*q*) *Brabin v. Tradum*, *Popham*, p. 140.

(*r*) *Greaterchy v. Beardsly*, 2 *Levinz*, p. 241.

because the ordinary hath jurisdiction, and the churchwardens cannot jostle out his authority" (s).

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USE.

182. And this appears to have been had in view in the act of parliament passed in 1860 to facilitate the union of parishes in cities, towns, and boroughs (t). Under certain circumstances (after reserving sufficient for all the parishioners attending service), seats in the church might be provided for non-parishioners. Over these the churchwardens alone have control, since non-parishioners can have (unless by prescription) no rights in the church, and therefore cannot be entitled to appeal to the bishop; whereas it is expressly provided that the parishioners' seats are to be disposed of by the churchwardens under the bishop.

Appears in act
of parliament
in 1860.

183. Watson, referring to Pym and Gorwyn's case (u), says, that though it is said to have been held that seats in the body of the church are disposable by the parson and churchwardens, this must be understood of the usual cases, where there is no dispute about the matter, and the ordinary does not interfere because none complain (w). But according to other reporters of the same case, it was held that the ordinary had primarily the disposal (x),

Ordinary may
have had no
reason to
interfere.

184. And it has been held that parishioners cannot prescribe to dispose of pews exclusive of the ordinary, because the ordinary not acting, might be because there had been no occasion for his intermeddling; but that cannot vest the right in them who are only a corporation capable of goods, but not of inheritance (y).

Wardens are
not capable of
inheritance.

(s) Langley v. Chute, *Sir Tho. Raym.* p. 246.

(t) 23 & 24 Vict. c. 142, s. 27.

(u) Pym v. Gorwyn, *Moor*, p. 878.

(w) Watson's *Cl. Law*, p. 388.

(x) Corven's case, 12 *Coke*, p. 105; Garven and Pym's case, *Godb.* p. 200. These and Pym v. Gorwyn, reported by *Moor*, p. 878, are one case, but the names spelt differently by the different reporters.

(y) Presgrave v. Churchw. of Shrewsbury, 1 *Salk.* p. 166. Such prescriptive right void, *Com. Dig.* "Esglise" (G. 3).

CAP. II.
USE.

If all are satisfied bishop need not interfere.

Parson has no authority.

Neither clergy nor vestry have any right to interfere.

But formerly often done where church was rebuilt.

Right of parishioners to use of church.

185. As to the mere arrangements of seats, if the parishioners can settle that amongst themselves, and to their own satisfaction, and can agree about the expense, there seems but little necessity for the interference of the incumbent, the expense being that of the parishioners (*z*).

186. It was formerly held that the parson acted jointly with the churchwardens (*a*); but it has more recently been held that the incumbent has no authority in the seating and arranging the parishioners, beyond that of an individual member of the vestry, and that which his station and influence in the parish naturally give him (*b*).

187. And also that neither the clergyman nor the vestry have any right whatever to interfere with the churchwardens in seating and arranging the parishioners, as is often erroneously supposed. But at the same time the advice of the clergyman, and even sometimes the opinions and wishes of the vestry, may be fitly invoked by the churchwardens, and to a certain extent ought to have weight, or may reasonably be deferred to in this matter (*c*).

188. On rebuilding a church it used to be very common to leave the adjustment of the pews to the rector and churchwardens (*d*).

189. By the laws of King Canute, A.D. 1018, all people ought of right to assist in maintaining the church (*e*). Possibly upon this ground (for no other is suggested), it has been held that every householder has a right to call upon the parish for a convenient seat (*f*). Perhaps, had

(*z*) *Tattersall v. Knight*, 1 *Phill.* p. 233.

(*a*) *Pym v. Gorwyn, Moor*, p. 878; *Ayliffe's Par.* p. 484; *Wood's Inst.* p. 94.

(*b*) *Tattersall v. Knight*, 1 *Phill.* p. 233.

(*c*) *Fuller v. Lane*, 2 *Add.* p. 425; *Pettman v. Bridger*, 1 *Phill.* p. 323.

(*d*) *Rogers v. Brooks & B.*, M. T., 24 Geo. III., *B. R.*, cited in *Stocks v. Booth*, 1 *T. R.* p. 432 n.

(*e*) *Johnson's Canons*, A.D. 1018, No. 29.

(*f*) *Groves & R. v. Rector of Hornsey*, 1 *Hagg. C. R.* p. 194.

the point been more specially under consideration in several judgments on pew law, the word "parishioner" would have been substituted for "householder;" since it is difficult to understand that every individual resident parishioner should not reasonably require a like accommodation to that granted to each richer family through its rate-paying head. All alike are Christians, and members of the church of the nation; and those of the poorer class presumably have less opportunity than their richer neighbours of attending divine service, and of obtaining instruction in religion. In fact, as stated in various judgments, and explicitly in the Report of the Parliamentary Commission, the object to be attained is the general accommodation of all the parishioners (*g*).

CAP. II.
USE.

Parishioner
rather than
householder.

Church for use
of all.

190. Various decisions, probably for the sake of satisfying those who were most likely to be exigent (since the doctrine is not impressed with a stamp of high antiquity, and it appears to want any original legal basis), direct that though all are entitled to seats, yet a preference should be shewn for persons of the higher social standing in the parish; but still the rights of all are maintained, though not their equal rights which the early decisions emphatically uphold. The origin and gradual rise of this practice is shown fully in Book I., Chap. VI. of the present work.

Subsequent
doctrine of
preference.

191. The only early case is that in 1493, when Fitzwalter sued on a writ of trespass for breaking and carrying away his seat in church; when, in deciding against the plaintiff, the court said that perhaps the Ordinary would order for the gentlemen places convenient for them, and for the poor other convenient places (*h*). That the places for

Only early case
probably refers
to chancel.

(*g*) *Report of Com. on Eccl. Cts.*, 1832, 12mo. ed. p. 129.

(*h*) *Year Book*, 8 Hen. VII. 12.

CAP. II.
USE.

Parishioners' claim to seats according to rank; though all still entitled.

Long possession and other claims for consideration.

Doubt as to any allotment where there is not room for all the parishioners.

gentlemen were probably in the chancel will be seen on reference to Book I., Chap. VI. of the present work.

192. As laid down by Sir John Nicholl in the case of *Fuller v. Lane*, before referred to, the parishioners have a claim to be seated according to their rank and station; but, on the other hand, the churchwardens are not, in providing for them, to overlook the claims of *all* to be seated, if sittings can be afforded them. Accordingly, they are bound in particular not to accommodate the higher classes beyond their real wants, to the exclusion of their poorer neighbours, who are equally entitled to accommodation, though not to equal accommodation, supposing the seats not to be equally convenient (*i*).

193. The object to be attained is the general accommodation of all the parishioners, and in endeavouring to effect this due consideration must be paid to rank, station, number in family, long possession, and the particular state of the parish with respect to church room (*j*).

194. It will be seen, that by the common-law right, which is recognized and admitted in these decisions, all parishioners are equally entitled, and churchwardens are compellable by ecclesiastical censures to provide places for all. With the enormously increased, and still rapidly-increasing population, it has become an impossibility to provide seats for all, notwithstanding the number of additional churches annually consecrated. The question then arises, and has yet to be determined, whether churchwardens are bound to allot seats to some, to the seclusion of the rest of the parishioners, who would thereby be deprived of their original common-law right; and, if not bound, whether they can legally do so in the exercise of

(*i*) *Fuller v. Lane*, 2 *Add.* p. 426.

(*j*) *Rep. on Eccl. Cts.* p. 129.

their discretion, or under the immediate authority of the ordinary.

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USE.

195. It has been held that an inhabitant in a parish will probably have some permanent place for himself and his family to sit in. A person occupying a respectable station is not, each time he comes to church, to wait till the clerk or sexton allots a sitting to him (*k*). The idea of absolute freedom, such as once existed, had evidently been entirely lost sight of when this was said.

Parishioners are not to depend on clerk or sexton for seats.

196. Many decisions have been given, and dicta enunciated with reference to the powers and duties of churchwardens in the allotment of seats, which we proceed to mention in detail; but the right of *all* the parishioners to the use of the church must be borne in mind as a primary necessity, to which mode and powers of arrangement are subsidiary.

Arrangement is a question subsidiary to the rights of all the parishioners

197. Generally speaking, the churchwardens act more correctly in allotting vacant pews to such parishioners as have the best claim to them, in point of standing in the parish and general respectability, rather than to those who happen to succeed as tenants of the houses inhabited by the late occupiers of those pews (*l*).

Preference of respectability to successors of former occupiers.

198. Where the churchwardens, in exercise of their right, seated a person of respectability, who had a large and increasing family, and who inhabited one of the principal houses, and paid highly to the parish rates, it was held that this might properly be pleaded, in defence of their conduct (*m*).

Wardens may plead several reasons for allotment.

199. Every man who settles as a householder has a right to call on the parish for a convenient seat, and if the

Additional church room must be pro-

(*k*) *Morgan v. Curtis*, 3 *M. & Ry.* p. 393.

(*l*) *Fuller v. Lane*, 2 *Add.* p. 438.

(*m*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 40.

CAP. II.
USE.

vided when
there is not
room for all.

Sed quære
now.

Doubt whether
beginning to
build consti-
tutes pa-
rishionership.

Wardens may
be cited for
neglect or
excess.

Citation to
show cause is
a convenient
proceeding.

Answer of "no
vacancy" would be a
sufficient
return.
It is impossible
always to
supply

church is insufficient to the due accommodation of the parishioners, it is highly proper it should be enlarged, as this is an inconvenience against which the parish is bound, and may be compelled by ecclesiastical censures, to provide (*n*).

200. At least, it was so held by Lord Stowell in 1793; but since the churchwardens were deprived by the Act for the Abolition of Compulsory Church Rates(*o*), of the power of raising funds, it cannot be supposed that their liability to provide sufficient church room for all the parishioners any longer exists.

201. It seems extremely doubtful whether a person begins to be a parishioner at the time of building a new house in the parish in which he intends to, and afterwards does, reside (*p*).

202. If the churchwardens neglect or go beyond their duty in the seating of the parishioners, they may be cited in the Ecclesiastical Court (*q*).

203. Where the churchwardens were cited to show cause why they had not seated, or caused to be seated, the plaintiff and his family in the parish church, according to his station and condition, he being a principal inhabitant and parishioner, and having duly applied to them to be so seated; the court thought the process had issued very properly, and that this was a convenient mode of proceeding (*q*).

204. It would be a sufficient return if the churchwardens were to aver that they were unable to comply with the request, on the ground of there being no vacancies (*q*).

205. If that return were made and duly established, it might be entitled to much consideration, as, in the enlarged

(*n*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 194.

(*o*) 31 & 32 Vict. c. 102.

(*p*) See *Fuller v. Lane*, 2 *Add.* p. 432.

(*q*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 316.

population of many parishes, it may really not be in the power of the churchwardens to make immediate additions to the fabric, or to build chapels at once for the accommodation of the inhabitants (*r*).

CAP. II.
USE.

additional
church room
immediately.

206. But if there are existing pews improperly occupied, the mere offer of a permission to erect a pew is not a good return (*s*).

Offer of leave
to erect a pew
is not suffi-
cient.

207. In exercising their duty the churchwardens must act with just discretion (*t*), and with due regard to any legal or equitable title (*u*).

Wardens must
act discreetly
and legally.

208. Where church room is abundant, and the population is thin, persons of large property and large families may have large pews allotted to them, which afterwards may be taken away or diminished, when circumstances change; as if their families become reduced in number, or the church room, from increase of population, becomes more wanted (*v*). The subordination of individual convenience to that of the parish is thus clearly laid down.

Where room
is abundant
large pews may
be allotted.

209. A single parishioner filed a bill against churchwardens, alleging their intention to execute works in the church which would be injurious to himself as a parishioner in habit of attending divine service. The vestry then passed a resolution to abandon the works altogether. The plaintiff still persisted, but his motion, made afterwards, was declared to be improper, and was refused with costs.

Whether works
in the church
are nuisance to
parishioner?

[*Quære*, whether this is a private nuisance and such bill could be sustained (*x*).]

210. The right being in the parishioners, it follows that

Non-pa-
rishioners

(*r*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 316.

(*s*) *Ibid.*, p. 317.

(*t*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 33.

(*u*) *Drury v. Harrison*, cited in *Parham v. Templar*, 3 *Phill.* p. 516.

(*v*) *Parham v. Templar*, 3 *Phill.* p. 523.

(*x*) *Woodman v. Robinson*, *Sim.*, 3 *N. S.* p. 204.

CAP. II.
USE.

can claim only
by prescription.

But some pro-
vision made
for them by the
Union of
Benefices Act.

non-parishioners and extra-parochial persons can have no possessory claim to seats in the body of the church, nor any title whatever except by prescription (*y*).

211. But where, under the Union of Benefices Act, a commission (appointed under the act) report that it is not expedient to carry into effect a proposed union, and that it would be expedient to afford improved accommodation for casual residents and non-parishioners, the bishop may, if funds be provided within two years, direct that one or more of the churches which had been proposed to be united, be re-seated accordingly, and after retaining sufficient for all the parishioners attending divine service the rest of the seats shall be free to non-parishioners in accordance with the report, but under the control of the churchwardens (*z*). A right, though of a peculiar and modified description, is thus granted to non-parishioners.

Possession
gives no claim
against
ordinary or
wardens.

212. Claims grounded on possession cannot be maintained as against the ordinary, or churchwardens under him, for they may displace and make new arrangements (*a*).

Mere posses-
sion good
against
disturbers.

213. An allotment of seats, by the authority of the churchwardens, gives a kind of possessory title, clearly good against a disturber; and it would even appear that an equally valid title may be acquired merely by an usurped occupation, at first with their concurrence; and afterwards, in the absence of objection from them, their consent will be presumed (*b*). But such a title in itself gives rise to serious litigation, and subsequently leads to an infinite number of claims to prescriptive titles (*c*).

(*y*) *Byerley v. Windus*, 5 *B. & C.* p. 1.

(*z*) 23 & 24 *Vict. c.* 142, s. 27.

(*a*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 322.

(*b*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 31.

(*c*) *Report on Eccl. Cts.*, p. 131.

214. Considering the weight which has, however, been attached to a possession under an allotment by the churchwardens, they ought not, without cause, to displace persons in possession; and if they do, the ordinary would reinstate them; the possession has its weight, and the ordinary would give a person in possession *cæteris paribus*, the preference over a mere stranger (*d*).

CAP. II.
USE.

And has weight with wardens and ordinary; and gives preference.

215. It being the clear law of this country that the use of pews belongs to the parishioners, and pews are allotted to them by the churchwardens subject to the control of the ordinary, it follows that a seating of this kind by churchwardens does not give a permanent and exclusive right and is not like a faculty, because it is liable to alterations as the circumstances of the parish may require (*e*).

But no permanent right.

216. It was also held, that though the faculty (with which the right had commenced) had expired, and though the party had no prescriptive title, yet so long as he lived and continued an inhabitant of the parish, in his present or some other respectable house, he had personally such a possessory right, as, except on very strong grounds of paramount necessity arising from an urgent want of accommodation for other persons, it would be improper to disturb (*f*).

Possession continued to grantee of expired faculty whilst in parish.

217. But (apparently), lest it should breed a prescriptive right, the court recommended, that if there were not very strong reasons to the contrary, the churchwardens should not continue the pew to the occupier of the late faculty holder's house (*g*).

But not to his successors in the house.

218. Still the court will not go out of its way to confirm possession, for this might be attended with injurious conse-

Court will not usually confirm possession to them.

(*d*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*e*) *Parham v. Templar*, 3 *Phill.* p. 523.

(*f*) *Ibid.* p. 733.

(*g*) *Ibid.* p. 736.

CAP. II.
USE.

Court confirming a displacement need not adopt wardens' allotment.

Possession implies due allotment.

Six years insufficient against disturber.

Non-parishioners' possession for 100 years gives no right.

Twenty years and upwards sufficient.

As against wardens may rest on possession, acquiescence, and suitability.

quences to the parish, and it would countenance the idea, which rather ought to be checked, that the pew is specially appropriated to the house (*h*).

219. Therefore in a suit for perturbation of seat, if it appear that the churchwardens have acted properly in displacing the plaintiff, the court will dismiss them; but will not proceed to confirm the possession of the person seated by them, as it does not form part of the question before the court (*h*).

220. A possessory right to a pew is sufficient to maintain a seat against a mere disturber; the fact of possession implies either the actual or virtual authority of those having power to place (*i*).

221. But six years' possession is not sufficient against a mere disturber (*k*).

222. And a possession of upwards of one hundred years was held not to give to the Society of Staples' Inn, which is extra-parochial, even a possessory title to certain pews in the church of St. Andrew, Holborn (*l*).

223. And where a person set up a possessory right in a pew that his grandfather had an estate and pew for twenty years and that he succeeded to it, that right was held good against a mere disturber (*m*).

224. On the one hand it was held that a suit against the churchwardens for perturbation of seat may rest on a possessory title, and acquiescence of former churchwardens, and on the fitness of the party, from the number of his family or amount of property, to occupy it; supposing that the churchwardens have acted arbitrarily (*n*).

(*h*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 41.

(*i*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*k*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 322.

(*l*) *Byerley v. Windus*, 5 *B. & C.* p. 1.

(*m*) 2 *Rolle's Abr.* p. 288.

(*n*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 40.

225. And on the other hand that a bare possession can never give a right of action for the disturbance of a pew, because every parishioner has a right to go into the church. If a person does not take the trouble to apply to the ordinary for a faculty, or to the minister and churchwardens to allot him a seat, he cannot maintain an action against a wrong-doer. For if bare possession were allowed to be a sufficient title, it would be an encouragement to commit disorders in the church (*o*).

CAP. II.
USE.

Bare possession will not ground an action for disturbance.

226. A person having permission from the churchwardens to sit in a pew temporarily, and in order, by keeping possession for a future tenant, to carry into effect the conditions of sale of a house, to which the pew had been attached for ninety-nine years under a faculty since expired, was held to have no possession on which he could bring a suit for perturbation against a mere intruder, such permission being illegal, as confirming the sale of the pew (*p*).

Temporary permission insufficient for suit for perturbation

227. In one case it was said that a possessory right may be good as against a disturber, although the possessor admitted his title to have been acquired by purchase (*q*).

Title even by purchase might suffice.

228. And, on the contrary, it was said in another case that a title must not be pleaded as founded on purchase, hiring, and private bargain, all which are illegal and void (*r*).

Other decision to the contrary.

229. But a possessory title to a seat in a church, acquired by purchase from another individual twenty years previously, is a sufficient ground for resisting the grant of a faculty to another claimant (*s*).

Possession gives a standing to oppose grant of faculty.

(*o*) *Stocks v. Booth*, 1 *T. R.* p. 430.

(*p*) *Blake v. Usborne*, 3 *Hagg.* p. 735.

(*q*) *Wilkinson v. Moss*, 2 *Lec.* p. 260.

(*r*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 37.

(*s*) *Wilkinson v. Moss*, 2 *Lec.* p. 259.

CAP. II.
USE.

Burthen lies
on disturber to
prove his right.

230. The burthen of proof lies upon the disturber to show that he has been placed in the pew by the actual or virtual authority of those having power so to place: or he must justify his disturbance by showing a paramount right—that is, a right paramount to the ordinary himself, as in the case of a faculty by which the ordinary has parted with the right (*t*); or a prescription and such immemorial usage as presumes the grant of a faculty.

Possessor dis-
turbed should
bring suit for
perturbation.

231. A person in asserting his right to a seat should not endeavour to gain possession of the pew by forcible means, as, for instance, by wrenching off the lock, but he ought to sue the occupier for a “*perturbation*” (*u*).

Whether seats
to be kept
vacant.

232. Doubts have been often entertained whether in the event of any persons to whom seats are allotted by the churchwardens, not being present and occupying them at the beginning or at any specified part of divine service, the seats can be made available for other persons during that, or the remainder of that service; but the question seems never to have been tried.

As to right of
clergyman's
family to a
seat.

233. It was said by the court that where the clergyman is in possession of sittings for his family in an ancient parish church, he appears to have such a possessory title, that neither the vestry nor any individual can molest or disturb him (*x*). But it is by no means obvious upon what authorities or reason this dictum is based.

Payment gives
no title to
pews.

234. Payment in any form gives no right: as pews in a parish church are not the subjects of private property, no possessory right can be founded on purchase, hiring, or private bargain; as by the established principles of law, no title to pews can rest on any such foundation (*y*).

(*t*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*u*) *Woollocombe v. Ouldridge*, 3 *Add.* p. 3.

(*x*) *Spry v. Flood*, 2 *Curt.* p. 359.

(*y*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 37.

235. Neither the parishioners by their consent, nor the ordinary, nor any power but the legislature, can deprive the inhabitants of their general right; and such acts as demanding money for pews are contrary to the law of the land (*z*).

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USE.

Pew-rents are
contrary to law.

236. It is clearly the law that a parishioner has a right to a seat without payment; and it is a wild conceit that there can be such use made of pews as of villas, or other common property (*a*).

Pews cannot be
treated like
villas.

237. The practice of letting pews, and applying the rent to ease the parish rate, or indeed for any other less specious pretence, is a practice which has been constantly reprehended by the ecclesiastical courts as often as it has been set up (*b*).

Letting pews
always repre-
hended by the
court.

238. It is clear that the practice under the sanction of a vestry, of letting and selling of pews would be illegal and null, however much custom, in contravention of the law, may have prevailed in the parish. An act of parliament alone can render such a sale legal (*c*).

Practice, under
sanction of
vestry, is
illegal.

239. Where the churchwardens and vicar, in order to pay the expenses of new pews, had assigned pews to certain persons, their heirs, executors, &c., for sums specified, the court held this to be illegal, and that the churchwardens might seat the parishioners in those pews as if no such order had been made (*d*).

Assignment
(for money)
by vicar and
wardens con-
fers no rights.

(*z*) *Astley v. Biddle*, 1 *Hagg. C. R.* p. 318, n.

(*a*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* pp. 317 & 319.

(*b*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 318; *Wyllie v. Mott & F.*, 1 *Hagg.* p. 33.

(*c*) *Craig v. Watson*, unpub.: citing *Stevens v. Woodhouse*, 1 *Hagg. C. R.* p. 318 *in notis*; and *Walter v. Gunner & D.*, reported *Ibid.*; and *Wyllie v. Mott & F.*, 1 *Hagg.* p. 37.

(*d*) *Fuller v. Lane*, 2 *Add.* p. 427; *Churchw. of Kensington v. Trier Consist.* 1721, cited 1 *Hagg. C. R.* p. 318, n.; *Stevens v. Woodhouse*, *Arch.* 1792, cited *Ibid.*

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USE.

Gives no power
of sale.

Court cannot
inquire into
terms between
parishioners
and contri-
butor.

Custom to sell
is illegal.

Wardens
directed not to
sell the seats.

Though the
payment be
altogether
illegal,

240. A vestry granted for 10*l.* a pew to a man and his assigns, appropriated to such house as he should build. He assigned to another, who applied for a faculty. The court disallowed the applicant's claim to a pew, and ordered him to be placed in the common part of the church (*e*).

241. The court has no authority to institute or control any inquiry as to what private understanding may have been come to between the parishioners and a contributor to the enlargement of a church; or whether the conditions have been mutually fulfilled or not, or what relation his subscription may bear to the other subscriptions (*f*).

242. In a suit of perturbation, where the party pleaded purchase and the custom of the parish, the court rejected the libel and held the custom illegal (*g*).

243. A parishioner resident for forty years, and occupant of a pew during the same time, was required by the churchwardens to pay a rent for it, alleging such to be the custom; and on his refusal, one of them placed another person with him in the seat. A suit for "perturbation of seat" was brought against this churchwarden, and the court thought he had made an improper use of his authority, and directed the churchwardens should not sell the seats (*h*).

244. In a libel for perturbation of seat, an article alleged that on the building of a gallery the churchwardens and vestry had sold the seats, and that the pews in question had been purchased and paid for nearly twenty years before. The court held that this was alleging what from beginning to end was an illegal transaction,

(*e*) *Harford v. Jones*, Consist. 1724, cited in 1 *Hagg. C. R.* p. 318, n.

(*f*) *Craig v. Watson*, unpub.

(*g*) *Hole v. Burnet*, Consist. 1740, cited 1 *Hagg. C. R.* p. 318, n.

(*h*) *Astley v. Biddle & R.*, cited 3 *Phill.* p. 517, and 1 *Hagg. C. R.* p. 318, n.

- and could furnish no ground of title; the money paid could only be considered as *voluntary* contributions and subscriptions towards the building. It may be a reason in the discretion of the churchwardens for seating these persons, and such seating may give a possessory right sufficient against a mere disturber; but if the court were to admit the pleading it would lend a countenance to a proceeding contrary to law (*i*).
245. Such sale and purchase do not improve, they rather operate against the claim; because, if a party seeks to found his title on an illegal origin, it goes far to justify his removal (*k*). CAP. II.
USE.

it may influence wardens' discretion and so obtain possessory title.
246. It is now distinctly held that the churchwardens may remove persons, originally placed in seats, or their descendants; but if they do so capriciously, or without just ground, the ordinary will control and correct them (*l*). But operates against title claimed as against the wardens.

Wardens may alter possession but not capriciously.
247. If the churchwardens interfere to take away a seat, and, *à fortiori*, to take it to themselves, the ordinary will interfere, as by a suit of perturbation of seat, although it were not originally meant for that purpose (*m*). Nor especially if for their own advantage.
248. In many churches their power over seats is never exercised by the churchwardens, and particular houses and families are allowed to have permanent pews (*n*). Such power is often not exercised.
249. In such cases the power of removal is not to be exercised, except in a case of strong necessity; but such power, in order to provide for the convenient attendance of the other parishioners upon Divine Service, ought not to be taken away from the churchwardens (*o*). And only in case of necessity for convenience of others.

(*i*) *Wyllie v. Mott & F.*, 3 *Phill.* 523.

(*k*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 30.

(*l*) *Parham v. Templar*, 3 *Phill.* p. 523.

(*m*) *Drury v. Harrison*, cited in *Parham v. Templar*, 3 *Phill.* p. 516.

(*n*) *Morgan v. Curtis*, 3 *M. & Ry.* p. 394.

(*o*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 41.

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USE.

And still more
from the
necessity of
subsequent
times.

250. Although it was the opinion of Lord Stowell that the churchwardens of their own authority could not interfere with a possessory right, without reference to the ordinary, yet Dr. Lushington, in a subsequent case, alluding to this opinion, said, that perhaps, later cases may have extended their power, and the necessity of the times may have allowed a different practice to grow up, and it may be competent to them to act without any authority of the ordinary previously conferred (*r*).

And as a pro-
vision against
the growth of
prescriptive
right.

251. In fact, it seems desirable that the occupancy of pews should be altered from time to time, according to circumstances, as the best provision against the birth and growth of those prescriptive rights to pews, as *in* certain families, or *annexed* to certain messuages, the existence of which is so injurious to the general interests of the parishioners (*s*).

Practice of
families being
seated together.

252. By habit, it no doubt becomes a matter of feeling with many to perform their religious duties by the sides of their wives and families, and, in some respects, it is a matter of practical benefit, so far as may be, to indulge this feeling. Parents in that case are more attentive, as setting an example to their children, who are likely to be, and, undoubtedly, in many instances are, benefited by that example. As a matter, therefore, both of feeling and practical advantage, families should be seated together in church, where this can be done (*t*).

To avoid
mixing dif-
ferent families.

253. Thus, if the population be increasing, and the church room already insufficient, and there be a pew capable of accommodating seven or eight persons, and the family using it be reduced to one or two, it may be

(*r*) *Spry v. Flood*, 2 *Curt.* p. 357.

(*s*) *Fuller v. Lane*, 2 *Add.* p. 438.

(*t*) *Ibid.* p. 434.

proper, either to remove such family altogether, or, at least, to seat some other persons in the same pew (*u*).

CAP. II.
USE.

254. In a case decided in 1793, when it was suggested that the churchwardens might put different families into the same pew, as the pews were not appropriated by any faculty from the ordinary, and that these pews would afford more sittings, the court held, that there was nothing so extravagant in an addition which it had been proposed to make to the church, as to induce the court to adopt in preference to such addition a proposal to place individuals of different families into the same pews, which might produce contention and inconvenience (*x*).

Formerly held that different families should not be put in one pew.

255. But in 1832 it was decided that, if there was not any one large family of long standing and respectable station in the parish who wanted such a pew as that in question, the churchwardens might place in it two or three families, giving them sittings in proportion to their numbers; for in a dense and increasing population a pew may be allotted in portions and sittings, if the exigency of the parish renders such an exercise of discretion expedient and proper (*y*).

But now otherwise.

256. And without any interference on the part of the churchwardens any temporary possessory right ceases of itself under certain circumstances. Thus, there can be no doubt that a mere possessory right ceases when the use and occupation cease (*z*); and when a man quits the parish, his right to use a seat is at an end, because he has ceased to be a parishioner (*a*), and therefore if he per-

Possessory right ceases on abandonment or on leaving the parish.

(*u*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 41.

(*x*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 194.

(*y*) *Blake v. Usborne*, 3 *Hagg.* p. 734.

(*z*) *Woollocombe v. Ouldridge*, 3 *Add.* p. 7.

(*a*) *Byerley v. Windus*, 5 *B. & C.* p. 18; *Fuller v. Lane*, 2 *Add.* p. 427; *Parham v. Templar*, 3 *Phill.* p. 523.

CAP. II.
USE.

severes and sits there in spite of the churchwardens, he is an intruder.

Pew then reverts to parish.

257. The occupier of a pew, ceasing to be an inhabitant of the parish, cannot let the pew with, and thus annex it to his house, but it reverts to the disposal of the churchwardens (*b*).

Custom for owners of houses to let appurtenant pews is illegal.

258. A custom was pleaded that pews are appurtenant to certain houses, and are let by the owners to persons who are not inhabitants of the parish; it is evidently illegal and cannot be supported (*c*).

Otherwise it would become an annexation.

259. If a person letting his house from year to year were permitted to transfer the possession of a pew to each succeeding tenant, this would amount in effect to an annexation (*d*).

All previous right ceases.

260. And if such persons return to the parish and take possession of the pew, as a matter of right, they are mere intruders, and the churchwardens may remove them (*e*).

Liable to defeazance by the ordinary at any time.

261. Such a possessory right was originally liable to defeazance by the ordinary, and by the churchwardens, as officers of the ordinary, even during the claimant's continuance in the parish. And it ceased and determined *ipso facto*, upon his ceasing to be a parishioner, and the pew reverted to the parish at large, and became as liable as any other pew in the church to the disposal of the ordinary, and of the churchwardens, as his officers (*f*).

It ceases by a quasi abandonment.

262. Where a person who had sat in a pew for many years, was dispossessed of her sittings by another person, she withdrew from the pew altogether, and sat in a differ-

(*b*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 39.

(*c*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 317.

(*d*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 40.

(*e*) *Parham v. Templar*, 3 *Phill.* p. 524; *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*f*) *Fuller v. Lane*, 2 *Add.* p. 424.

- ent part of the church; although she all along dissented, yet she did not enter any formal protest, or institute any formal complaint for a year, when, upon her application for sittings elsewhere being refused by the churchwardens, she asserted her right to the pew in question. But it was held that her possessory right to the sittings had been lost by this *quasi* abandonment (*g*).
263. If a person having possession of a pew obtains the grant of a faculty for one elsewhere, his previous right is thereby determined. CAP. II.
USE.

Possessory right ceases by a quasi abandonment.
264. So when a person is indulged with a gallery, the parish ought to compel him to exchange his own pew for that accommodation. For he ought to be required either to go back to his own proper pew, or give it up to the parish (*h*). Determined by grant of faculty for another seat.

Or a gallery.
265. And under the Church Building Act of 1856, where a resident within any new parish or district formed under the provisions of the Acts of 1845 and 1844, has claimed and had allotted to him sittings in the church of such new parish, he thereby surrenders an equal number of sittings in the original parish church which he may have possessed under any other title than faculty or act of parliament (*i*). On obtaining allotment in church of new parish or district.
266. The court would be unwilling to give currency to an opinion that a parishioner, when a pew is vacant, is justified in stepping into and occupying it (*i.e.* permanently) without legal authority. The successor of persons so acting ought not, therefore, to be continued in the pew, though he ought to be properly seated (*k*). Parishioner has no right to take possession of a vacant seat.
267. And as the churchwardens have a right to exercise a reasonable discretion in directing where the congregation Wardens remove intruders and

(*g*) *Woollocombe v. Ouldrige*, 3 *Add.* p. 3.

(*h*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 319.

(*i*) 19 & 20 *Vict. c.* 104, s. 5.

(*k*) *Blake v. Usborne*, 3 *Hagg.* p. 736.

CAP. II.
USE.

use necessary
force.

May be con-
demned in
damages for
trespass, if
guilty of
unnecessary
force.

Person may be
removed out of
church if likely
to interrupt
the service.

shall sit, they may remove persons intruding into seats already appropriated. But they must use no unnecessary force and be able to effect the removal without public scandal, or disturbance of divine service (*l*).

268. A. claimed a right to sit in a particular pew in his parish church, in respect of a house and farm which he occupied there. B., another inhabitant, also claimed an exclusive right to the same pew for himself and family. The churchwardens had been appealed to on various occasions, and had given notice to A. that the pew belonged to the B. family. The churchwardens, on being applied to by B., went to the pew and desired A. to quit it, which he refused to do, upon which one of the churchwardens laid his hand on him, with a view to force him out, upon which A. rose and walked away. The congregation were assembling, but the clergyman had not entered the church. A. brought an action of *trespass*, for an assault and battery against this churchwarden; and the jury, thinking that some unnecessary force had been used, though the evidence on that subject was contradictory, found a verdict for the plaintiff, with *5l.* damages (*m*).

269. A parish clerk having been dismissed from his office by the rector, though irregularly, and another appointed, the former entered the church before divine service had commenced, and took possession of the clerk's desk by climbing into it from an adjoining pew. It was held by the Court of Exchequer that the churchwardens were justified in removing him from the clerk's desk, and also out of the church, if they had reasonable ground for believing that he would offer interruption during the celebration of divine service (*n*).

(*l*) Reynolds v. Monkton, 2 M. & Rob. p. 385.

(*m*) Ibid. p. 384.

(*n*) Burton v. Henson, 10 M. & W. p. 105.

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION **b.***RECTOR'S SEAT.***b. RECTOR'S SEAT.**

270. THE rector is entitled to the chief seat in the chancel (*a*).

Rector has chief seat in chancel.

271. The distinction in the appropriation of the nave and aisles to the congregation, and the chancel for the celebration of divine service, is very apparent. The parishioners generally are permitted to use the chancel at specified periods and for a specified purpose. The rector or incumbent has, from the earliest period, had his special place there.

Nave for people, chancel for clergy.

272. This fact is sufficient to account for his right to the chief seat in the chancel. But, besides this, he has a further and independent claim in respect to his keeping the chancel in repair, as he is bound to do (*b*).

Rector repairs chancel.

273. On the former ground the vicar had the right of sitting there before the Reformation, and consequently must retain this right still, unless it appear that he has quitted it (*c*).

Vicar also has a seat in the chancel.

274. As a vicar is one who is substituted for the rector to serve the church (the tithes being in the hands of a

Also perpetual curate.

(*a*) Hall *v.* Ellis, *Noy*, p. 133 (pub. 1656); Clifford *v.* Weeks, 1 *B.* & *A.* p. 506.

(*b*) Hall *v.* Ellis, *Noy*, p. 133.

(*c*) Burn's *Eccl. Law*, Fraser's (7th) ed., 1, p. 363; Johns. p. 269.

**b. RECTOR'S
SEAT.**

But that has
been ques-
tioned.

Doubt seems
limited to his
family.

Incumbent's
right can
scarcely be
doubted.

Lay impro-
priator has
rector's right,
unless other-
wise by pre-
scription.

Doubt as to
action for
disturbance.

lay rector), so a perpetual curate stands in the vicar's place (*d*).

275. But it has been doubted whether a perpetual curate has a right to a seat in the chancel; for perpetual curates were formerly mere stipendiary curates, and had no vested rights till long after the time of legal memory (*e*).

276. These observations as to the rights of perpetual curates were made only *ex majori cautelâ*, and not as giving any opinion as to what these rights were (*f*), and appear to apply rather to seats for the clergyman's family than for his own use.

277. In fact, one would think it scarcely open to doubt that the incumbent of the church, whether he be styled rector, vicar or perpetual curate, must possess such a right, in order to enable him to perform the most important and essential part of his duties in the celebration of divine service: it is not reasonable to suppose that the seat would be possessed by him for occupation simply as one of the congregation, or that it could be recognized as permissible for him to look on while some one else performs his highest function and duty.

278. A lay impropriator, it is said, has the right which a rector would have had, to the chief seat in the chancel (*g*), and *per consequens*, his farmer; but by prescription another parishioner may have it (*h*).

279. It has been doubted whether an action at common law cannot be maintained for a disturbance of a seat in the chancel, as it may be the freehold of an individual (*i*).

(*d*) Doe *d.* Richardson *v.* Thomas, 9 *A. & E.* pp. 571, 573.

(*e*) Spry *v.* Flood, 2 *Curt.* p. 358.

(*f*) Ibid. p. 360.

(*g*) Ayliffe's *Parer.* p. 486; Gibson's *Co.* p. 222; 1 Burn's *Ecc. Law*, p. 363.

(*h*) Hall *v.* Ellis, *Noy*, p. 133.

(*i*) Mainwaring *v.* Giles, 5 *B. & A.* p. 361.

280. A rule has grown up, and is adopted in the Church Building Acts, that the rector's family are also entitled to a pew in the chancel. And, it is said, that where the parson repairs, the vicar claims the right on behalf of his family, as well as the right to give leave to bury there and receive a fee for his permission (*k*). It is difficult to understand on what ground such a custom, for the incumbent's family to possess a pew in the chancel, can be founded. History shows, positively, that it did not exist at any early period.

b. RECTOR'S SEAT.

Rector's family entitled under the Church Building Acts.

281. As regards the family of a perpetual curate it was held, that there was great difficulty in assenting to the proposition that they have a common-law right to sittings in the church. A perpetual curate may be a mere stipendiary curate, the impropriation being *in utroque jure*, for the monasteries had cure of souls, and performed the duties of the church by stipendiary curates; and since the suppression of these monasteries, the impropiator might have the complete incumbency (*l*). It was not till A.D. 1756 that Lord Hardwicke interfered to protect the rights of the curates; but these were not common-law rights; so that if it be meant that a curate is to be protected in his title and sittings for his family by common-law right, as having existed from the time of Richard I., the court would have great difficulty in assenting to such a doctrine (*m*).

Whether the family of a perpetual curate are entitled is doubtful.

(*k*) Johnson's *Cl. Va. me.*, p. 269; followed by 1 Burn, p. 363.

(*l*) Duke of Portland v. Bingham, 1 *Hagg. C. R.* p. 157.

(*m*) Spry v. Flood, 2 *Curt.* p. 358.

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION c.

PRIVATE SEATS.

CHAPTER I.

CAP. I. FACULTY.

FACULTY.

The grant of a faculty. 282. A FACULTY or licence is a grant made by the consistory court of the bishop, held before his chancellor, commissary, or vicar general, for all ecclesiastical causes within his diocese (*a*).

Faculties are public or private. 283. Faculties appear to be of two descriptions:—
1st. Those which are public in their nature, and have for their object the benefit of the parishioners generally.
2ndly. Those which are private, and are for the exclusive benefit or convenience of an individual (*b*).

Public faculties. 284. Of the first sort are faculties for pewing a church, erecting a gallery or organ, making a church path, building a vestry-room and the like (*b*). Also for repairing, or enlarging, or rebuilding a church.

Private faculties. 285. Of the second sort are those which are granted to secure to some individual or family the exclusive use of a pew or vault, or to give permission for the erection of a monument or tablet, the removal of a corpse to another place of burial, or for privileges of a similar sort (*b*).

(*a*) Comyn's *Dig.* "Courts," N. 6.

(*b*) Rogers' *Eccl. Law*, p. 433.

286. Different considerations affect a grant for the purpose of building an aisle to those which must be considered in respect to a grant of a seat elsewhere (*c*). In the one case the parishioners' normal right to the use of the church in common is not affected; there is an addition to the church by which no one is damnified, and some little additional room is gained by the removal of the family which builds the aisle. In the other case a benefit is purported to be granted to one parishioner to the exclusion, and so far to the injury of the others; a point which merits much consideration.

CAP. I.
FACULTY.

Considerations affecting grant of faculty for an aisle, different to one for seat elsewhere.

287. As regards a faculty for an aisle, no doubt has been suggested that the bishop has full power, and should any gentleman, having a house in the parish, build a new aisle with the consent of the clergyman, patron, and ordinary, and have a faculty from the bishop to hold the same to the use of him and his family, to bury their dead in the aisle, and also to sit there for hearing divine service, on condition constantly to repair it, this faculty would give him a good title to the aisle (*d*). But there is a wide difference between seats in the body of the church and those in a minor chancel or chapel (*e*).

Unquestionable right to grant faculty to build and appropriate an aisle.

288. In the event of abandonment of his rights by the holder of a faculty, the seats would naturally revert to the disposal of the churchwardens and ordinary.

On abandonment of faculty rights, seats revert to parish.

289. As regards a faculty of the second description the doubt which has been suggested as to the right or duty of the bishop to allot seats to some individuals in preference to the rest in building admittedly for the use of the parishioners in common, applies with double force to a more permanent appropriation by faculty.

Doubt as to power of granting faculty to injury of other parishioners.

(*c*) Fuller v. Lane, 2 *Add.* p. 427.

(*d*) Prid. p. 299.

(*e*) Chapman v. Jones, *L. R.*, 4 *Ex.* p. 281.

CAP. I.
FACULTY.

It requires
cession of
their rights.

290. It would seem that in order to a valid grant of a seat to an individual (for it is in the nature of a grant rather than a licence) the rights of the other parishioners must be ceded. The churchwardens consented to the grant, in some of the early cases, but it could scarcely be contended that in virtue of their office they had authority to cede the rights of the whole parish for a time, and still less for a permanence; and clearly the ordinary could have no inherent authority to cede the rights of the parishioners.

And then some
consideration
is necessary;
but none given.

291. Nor could the rights be ceded, except for a consideration, and none is suggested. It cannot be the building of the pew, for that is no consideration received by the parish, but merely an act for the individual's own benefit; nor repairs, for they are a subsequent act, and only for the same object. Nor residence, for that exists equally before and after the application for the faculty. Nor can it be a pecuniary consideration; for even where, as in the case of contribution towards the erection of a gallery, money is paid, it is not as a consideration for a faculty, but as a donation towards the building.

And parish-
ioners cannot
be by any one
deprived of
their rights.

292. Further, it is held that neither the parishioners by consent, nor the ordinary, nor any power but the legislature (which can overrule all previously existing law) can deprive the inhabitants of a parish of their general right; and attempts to do so would be contrary to the law of the land (*h*).

Appropriation
to individuals
seems un-
reasonable.

293. On the other hand, an appropriation to a family seems contrary to reason, for if the ordinary may appropriate one seat to a house, he by the same reason may appropriate all the seats in the church to several houses, and so no room would be left for the other inhabitants (*i*) who have equal rights to the use of the church.

(*h*) *Steevens v. Woodhouse & B.*, 1 *Hagg. C. R.* p. 318, n.

(*i*) *Watson*, p. 385.

294. Watson especially doubts whether the ordinary *can* make a grant to bind posterity, as he cannot make a grant to a house (*k*)—persons only, and not things, being capable of grants (*l*). For it was said by Lord Coke, that in the body of the church a pew cannot belong to a house (*m*).
295. If it be said that the grant may be good to the present possessor of a house, and to the persons who in after time shall be possessors of such house, as a privilege annexed to that house; yet such a grant appears as unreasonable as if it had been made to a person and his heirs (*n*).
296. For if by the ordinary's grant, it may belong to a house, it must belong to the owners of the house, and must go with the house to a person and his heirs; and so a grant to the present and future possessors of a house, and to a man and his heirs, will have the same inconvenience (*n*).
297. For the owner of a house may remove into another parish, and have no tenant, and yet retain the seat, if it may by such grant belong to a house (*n*).
298. It became, however, the practice of the ordinaries through their courts to grant such faculties, and their right to do so has not been questioned at law; and we proceed with the points which have been determined respecting them. It will appear that many such grants were void *ab initio*, and others partially void.
299. There does not appear any instance in modern times of an annexation of a pew by faculty to a house or

CAP. I.
FACULTY.

Especially as to grants to a house.

To successive occupiers of a house appears unreasonable.

And as inconvenient as if to a man and heirs.

House may be untenanted.

It became the practice, and without question.

No modern annexations to houses.

(*k*) Watson, p. 392.

(*l*) Haynes' Case, 12 *Coke*, p. 113.

(*m*) 1 *Brown. & Gold.* p. 45.

(*n*) Watson, p. 385.

CAP. I.
FACULTY.

Though apparently essential to a faculty for seats.

If annexed goes with house.

Landlord cannot restrain tenant from its use.

Nor retain it to himself, nor let it.

Appropriation to families

message (*q*); and a faculty of this description (obtained by surprise) was revoked (*r*).

300. And yet such an annexation would seem in certain cases to be essential to the validity of the appropriation by faculty. Recently it was held in the Arches Court, that a faculty empowering certain parishioners to set up a gallery at the west end of a church, with seats for themselves, and their families, but not assigning a seat to any particular house, is bad (*s*); so far, at least, as to the grant of any exclusive rights.

301. If by faculty a pew be annexed to a message, it may be transferred with the message to another person (*t*).

302. And if a seat be appurtenant to a house, the owner of the fee cannot restrain his tenant from the use of it, because the seat is for the benefit of the house; namely, for the inhabitants of the house, and not for the benefit of the owner, if he cease to inhabit it (*u*).

303. Thus, where a person let his house and lived out of the parish, but covenanted with his tenant that he should not occupy the pew, in order that it might be let to others, this was held to be clearly illegal; for if a pew is rightly appurtenant, the occupancy of it must pass with the house, and individuals cannot, by contract between themselves, defeat the general right of the parish (*x*).

304. It is also very proper that the faculty should not

(*q*) *Butt v. Jones*, 2 *Hagg.* p. 423 (A.D. 1829).

(*r*) *Ibid.* p. 426.

(*s*) *Craig v. Watson*, unpub., citing *Chapman v. Jones*, 4 *Ex.* p. 280, as confirming the existing law on this subject.

(*t*) *Stocks v. Booth*, 1 *T. R.* p. 431; *Wyllie v. Mott & F.*, 1 *Hagg.* p. 39.

(*u*) *Byerley v. Windus*, 5 *B. & C.* p. 19; *Fuller v. Lane*, 2 *Add.* p. 428.

(*x*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 319.

appropriate the seats to the messuages, but rather to families resident in the parish (*y*).

CAP. I.
FACULTY.

305. Great inconvenience has been found to arise from pews having been so annexed; for the houses become dilapidated; the inhabitants of them fail in their circumstances; new houses are erected, and the occupiers of them want pews (*y*).

better than to houses.

Great inconvenience caused by annexing to house.

306. The right to sit in a pew may be apportioned; and, therefore, where by a faculty a pew was granted to a man and his family for ever and the owners and occupiers of his dwelling-house, and the dwelling-house was afterwards divided into two; it was held, that the occupier of one of the two (constituting a very small part of the original messuage) had some right to the pew; and, in virtue thereof, might maintain an action against a wrongdoer (*z*). It may be presumed that in case of a part of the pew being abandoned, the right to such part would not survive to the owner of the other part; their tenure would be more in the nature of tenants in common than of joint tenants.

Pew under faculty apportionable amongst occupiers of divided house.

Whether then held in joint tenancy.

307. No title can be good, either upon prescription or upon any new grant by a faculty from the ordinary, to a man and *his heirs*; for the pew must always be supposed to be held in respect of the house, and will, therefore, go with it to each successive inhabitant (*a*); otherwise when the person goes to dwell in another place, yet he should retain the seat, which is not in reason (*b*).

Faculty to a man and his heirs is bad.

308. The reason a faculty to a man *and his heirs* is bad, is, that as a seat in a church does not belong to the

They may reside out of the parish.

(*y*) *Tattersall v. Knight*, 1 *Phill.* p. 237.

(*z*) *Harris v. Drewe*, 2 *B. & Adol.* p. 164.

(*a*) 12 *Coke*, p. 106; 1 *Burn*, p. 360; *Stocks v. Booth*, 1 *T. R.* p. 432; *Walter v. Gunner & Drury*, 1 *Hagg. C. R.* p. 319; *Harris v. Wiseman*, *Winch*, p. 19.

(*b*) *Brabin v. Tradum*, *Poph.* p. 140; *Gibson's Cb.* p. 221.

CAP. I.
FACULTY.

person, but to the house, a man's heirs may reside out of the parish, and it would be an unjust usurpation from the parishioners to retain such a privilege for the use of others (*d*), as the right to a seat, whether the man and his heirs continue resident or not (*e*).

Bad where
house no
longer exists.

309. In the case of pews claimed as appurtenant to a messuage which the claimant had purchased, but which messuage is no longer in existence, such claim is bad (*f*).

Cannot belong
to land.

310. Nor can a seat be claimed, either by faculty or prescription, as appurtenant to land, because it is in respect to inhabitancy that it is to be used (*g*); and the ordinary himself cannot grant a seat as appurtenant to land (*h*).

Nor to non-
parishioner.

311. Nor has the ordinary power to make a legal grant, by faculty or otherwise, of a seat to a non-parishioner; such faculties are, so far, at least, merely void, that no faculty is deemed, either in the Ecclesiastical Court or at common law, good to the extent of entitling any person who is a non-parishioner to a seat, even in the body of the church (*i*).

Nor to house
out of the
parish.

312. It was discussed but not decided in *Hallack v. University of Cambridge* (*k*), whether a faculty could be granted to appropriate a pew to a person in respect of a house out of the parish. It would appear, however, that such faculty cannot be legally granted (*l*).

Nor to extra-
parochial
persons.

313. No distinction can be made among non-parishioners; the extra-parochials infringe equally upon the

(*d*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 321.

(*e*) *Gibs. Co.* p. 221; *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*f*) *Craig v. Watson*, unpub.

(*g*) *Gibs. Co.* p. 221; *Co. Litt.* p. 121 b.; *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*h*) *Pettman v. Bridger*, 1 *Phill.* p. 325.

(*i*) *Fuller v. Lane*, 2 *Add.* p. 427; *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*k*) *Hallack v. Univ. of Camb.*, 1 *Q. B.* p. 614.

(*l*) *Fuller v. Lane*, 2 *Add.* p. 427; *Byerley v. Windus*, 5 *B. & C.* p. 18.

rights of the parishioners with those who belong to another parish. They are equally non-contributory to the expenses of the church. It is the fault of those under whom they claim that they have no parish. They have the advantage of being extra-parochial; they must take the disadvantages also (*m*).

CAP. I.
FACULTY.

314. A faculty for erecting a pew, which contains a clause permitting the party erecting it to let it, would be (so far?) illegal (*n*).

Clause empowering letting illegal.

315. Even where an occupier has purchased a seat erected under a faculty containing a clause, permitting the party erecting it to sell it, this is no bar to the common law right of the parishioners, as such permission in the faculty is illegal. The practice of making such rules may have frequently prevailed, but it has constantly been discountenanced by the court (*n*).

Power of sale illegal.

316. That a party having had a seat allotted should further obtain sufficient room for her accommodation elsewhere, and be allowed to let out her pew to persons not resident in the parish, is an abuse which cannot be maintained; for it is a wild conceit that there can be such use made of pews, as of villas or other common property. It is sufficient indulgence which is usually given by faculties in granting the exclusive use, but no faculty was ever granted for purposes like these (*o*).

Pews cannot be treated like villas.

317. Faculties were certainly granted in former times with too great facility, and by no means with due consideration and foresight (*p*).

Faculties formerly granted too readily.

318. The experience of the mischief which has resulted from a too lavish grant of faculties in former times and the

Change of times not to be overlooked.

(*m*) *Byerley v. Windus*, 5 *B. & C.* p. 20.

(*n*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 314.

(*o*) *Ibid.* p. 321.

(*p*) *Fuller v. Lane*, 2 *Add.* p. 426.

CAP. I.
FACULTY.

Especial regard given to accommodation for the poor.

They might be driven to dissent.

Faculty effecting a reduction in free seats vicious.

Strong case required to induce any faculty now.

And very singular circumstances.

want of church room generally, and the propriety of affording additional sittings, especially to the poor, are strong features of the times; and they are not to be overlooked by ordinaries when application is made for a faculty (*s*).

319. And every possible reason exists, why no concessions should be made, at all likely to infringe upon the due accommodation of the poor in their several parish churches. It is to be presumed that they are the persons most in want of religious instruction, and their title, as such, in particular, to receive it, is expressly recognized by the Divine Founder of Christianity itself (*s*).

320. If disabled from receiving it from want of room in their parish churches, they are almost driven to seek it in places of dissenting worship, a circumstance exceedingly to be deplored; although of course they are clearly entitled, and should be freely allowed, to resort to such places of worship if they prefer it; provided they are really dissenters in opinion, from the doctrine or discipline of the Church (*s*).

321. A faculty for appropriating a seat to a message by taking down two pews where the poor were accommodated is, at least *primâ facie*, unusual and vicious. All the pews are for the accommodation of the whole parish (*t*).

322. A strong case should therefore be made out to induce the ordinary, in the exercise of a sound discretion, to appropriate any pew, by faculty, to a particular parishioner and his family, at the present day (*u*).

323. In 1829 the court said that, considering the increased population of the country, a parish must be very

(*s*) Fuller v. Lane, 2 *Add.* p. 423.

(*t*) Butt v. Jones, 2 *Hagg.* p. 424.

(*u*) Fuller v. Lane, 2 *Add.* p. 431.

singularly circumstanced to induce, and justify, a faculty of any sort for a pew, so as to preclude the parish from improving the church accommodation, particularly for the lower classes (*x*).

324. True it may be that, at the particular time when the faculty is applied for, its issue may not be generally inconvenient; the parishioners at large may be sufficiently accommodated, after and notwithstanding its issue. But in this even, the most favourable case, there are obvious reasons for inducing the ordinary to entertain such applications with a good deal of reserve (*y*).

Objectionable even though not inconvenient at the moment.

325. For instance, additional room may be soon, or at some time, wanted, suggesting the propriety of new arrangements in the church; but such future arrangements may be formidably obstructed, by the actual issue of the faculty then prayed (*y*).

But may become so.

326. Ordinaries are not, at this day, to tie up their hands against such future arrangements as the rapidly increasing population of the country may soon render necessary or convenient, in order best to provide for the general accommodation of their several parishes, by a too lavish issue of faculties, or by the issue of a faculty at all, but under special circumstances (*z*). (This was said by the court in 1825.)

Repeated caution enjoined.

327. The court eventually went further and said that ordinaries, at the present day, are bound not to issue faculties, appropriating pews to individuals, but under *special* circumstances (*z*).

Now only granted under special circumstances.

328. The result, upon the whole, of these faculties, is, that in many churches the parishioners at large are de-

By such faculties parishioners

(*x*) *Butt v. Jones*, 2 *Hagg.* p. 424.

(*y*) *Fuller v. Lane*, 2 *Add.* p. 431.

(*z*) *Woollocombe v. Ouldrige*, 3 *Add.* p. 4.

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at large often
deprived of
their rights.

Convenience of
parishioners
the chief
object.

Considerations
for court upon
an application
for faculty.

Whether pre-
judicial to pa-
rish at large?

Whether af-
fecting rights
of individuals?

Whether appli-
cant qualified?

The proportion
of sittings to
population.

prived, in a great degree, of suitable accommodation, by means of exclusive rights to pews, either *actually* vested in particular families by faculty or prescription, or at least, which is the same thing as to any practical result, *supposed to be* so vested (*d*).

329. The leading object of the court in granting faculties is the convenience of the parishioners (*e*).

330. There are various considerations to which the attention of the court should be directed when it receives an application for a faculty to an individual:—

331. 1st. Whether the appropriation would be prejudicial to the church or the parish generally? In which case, though the minister and churchwardens are the most proper persons to show cause, yet any other parishioner may oppose and show cause, if he thinks fit, because he has a general interest (*f*).

332. 2ndly. Whether it would affect the rights of any particular persons? In which case, only the persons who would be injured, or at least the churchwardens as guardians of the parochial rights of every parishioner, ought to oppose it (*f*), and no other parishioner who would not be personally affected.

333. 3rdly. Whether the person who sued for the faculty was fitly qualified to have such a grant (*f*).

334. What is the population of the parish in proportion to the number of sittings in the church? whether it is an increasing or a diminishing population? are necessary inquiries previous to any grant of a faculty for the appropriation of pews to particular persons. They are most necessary, and the result ought to be most satisfactorily in

(*d*) Fuller v. Lane, 2 *Add.* p. 428.

(*e*) Sharpe v. Hansard, 3 *Hagg.* p. 337.

(*f*) Partington v. Rect. of Barnes, 2 *Lec.* p. 345.

favour of such applicants, to insure the success of their applications (*g*).

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335. The size of the pew, also, and the proportion of the number of sittings in the pew to that of the applicant's family, are also to be taken into account (*h*).

Proportion of
pew to family.

336. The question whether any obstruction or inconvenience would be caused, is one which would come under the first head of inquiry (*i*).

Whether any
obstruction;

337. Whether any obstruction of light would be caused is another point for the consideration of the court (*k*).

or obstruction
of light;

338. The court should be careful to preserve the symmetry and proportions of the church inviolate (*k*).

or injury to
appearance of
church.

339. The fact that seats held under a faculty may be temporarily disturbed in an enlargement of a church furnishes no ground for opposition to the grant of a faculty for such enlargement (*l*).

Temporary
disturbance no
bar.

340. Ordinaries should be careful not to afford the applicants too great a proportion of room, or accommodation exceeding their real (actual and probable) wants to the exclusion of other parishioners; for *that* would be justifiable under no circumstances (*m*).

Parishioners
must not be
excluded.

341. The vestry granted to a man (in consideration of a money payment) a pew appropriated to his house which he sold to another, who thereupon applied for a faculty; but the court refused it and ordered him to be placed in the common part of the church (*n*).

Possession
originating in
payment is
ground for
refusing a
faculty.

342. In a case in the year 1825 the court would not say that no possible case for the issue of such a faculty might

Benefaction
might possibly
give moral
claim for
faculty.

(*g*) Fuller v. Lane, 2 *Add.* p. 432.

(*h*) Ibid. p. 433.

(*i*) Tattersall v. Knight, 1 *Phill.* p. 233.

(*k*) Groves & Wright v. Rect. of Hornsey, 1 *Hagg. C. R.* p. 195.

(*l*) Harrison v. Swayne & S., unpub.

(*m*) Fuller v. Lane, 2 *Add.* p. 436.

(*n*) Harford v. Jones, Consist. 1724, cited in 2 *Hagg. C. R.* p. 318, n.

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arise, as to a benefactor contributing liberally to the enlargement of the church or the accommodation, especially of free seats for the poor, but even then it must be fettered with all due restrictions and limitations (*m*).

Such faculties probably not granted in future.

343. But from what has been laid down in subsequent cases, it is not probable that even this limited favour would in future be accorded.

Pew rights under faculties to be duly considered.

344. In granting a faculty for the enlargement of the church, the court will take care that the rights of persons, claiming a pew under a faculty, are secured, although they do not appear to the usual citation of parishioners (*n*).

Court must take care not to exceed its authority.

345. The court must take care that it does not exceed its authority, well observing where no legal rights interpose and where such rights and objections do interpose. If a faculty were granted and it should turn out that there was already a prescriptive right, the faculty would (so far at least) be void, and the person having such a right would be entitled, if his pew were removed or altered under the supposed authority of such faculty, to have it reinstated (*o*).

Possessory right gives standing to oppose faculty.

346. A pew alleged to have been bought twenty-five years previously and enjoyed since, gave a possessory right sufficient to defeat an application for the grant of a faculty of the same seat to another, but did not give an absolute right (*p*). (Delegates, 1756.)

Faculty cannot be granted in a suit to defendant.

347. The decree for a faculty made in favour of one who had only appeared as a defendant to oppose a faculty being granted to another, was reversed by the Arches Court (*q*).

(*m*) *Fuller v. Lane*, 2 *Add.* p. 436.

(*n*) *Harrison v. Swayne & S.*, unpub.

(*o*) *Knapp & ors. v. Nicholl*, 2 *Roberts*, p. 364; *Archer v. Sweetman*, *Fort.* p. 346.

(*p*) *Dearle v. Southwell*, 2 *Lee*, p. 260.

(*q*) *Ibid.*

348. Whether any parishioner, not specially damned, has a right to oppose the grant of a faculty to another parishioner is not settled.

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Doubt if one not damned can oppose.

Early faculties in various forms.

349. Faculties have been granted in various forms. There are some instances of faculties *at large*, that is, appropriating pews to persons, and their families, without any condition annexed, of residence in the parish (r).

350. The appropriation of a pew has sometimes been to a man and his family, "*so long as they continue inhabitants of a certain house in a parish*:" and Sir John Nicholl said, that this is perhaps the least exceptionable form, as it is unlikely that a family continuing in the occupation of the same house in the parish, shall be in circumstances to render its occupation of the same pew in the church very objectionable (s).

Sometimes during inhabitation of a certain house.

351. Buller, J. (K. B.), stated that he had seen a faculty for exchanging seats in a church; under which, after stating that A., in right of a particular house in a parish, had immemorially a right to a certain pew in the church, the ordinary gave his consent to exchange it for another, but still each was annexed to the house (t): but the validity of such a faculty seems never to have been tried, nor does any other example appear to be known.

For exchanging seats.

352. The more modern form was, to a man and his family, "*so long as they continue inhabitants of the parish*" generally. Still this class of faculties is objectionable, inasmuch as they often entitle parishioners to the *exclusive* occupancy of a pew, of which they, themselves, are no longer in circumstances to be *suitable* occupants at all, whatever their ancestors might have been (u).

While inhabitants of the parish.

(r) Fuller v. Lane, 2 *Add.* p. 427.

(s) *Ibid.* p. 426.

(t) Stocks v. Booth, 1 *T. R.* p. 431.

(u) Fuller v. Lane, 2 *Add.* p. 426.

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Should be
while inhabi-
tants of parish;
or of parish
and of a certain
house.

At their expi-
ration parish
rights revive.

Ordinary must
use a sound
discretion in
granting a
faculty, and is
subject to ap-
peal.

Not a matter
for prohibition.

Faculty upon
union of city
churches.

353. So Sir John Nicholl said it was very desirable that after due time has been given as encouragement to those who build them, the seats should return to the disposition of the ordinary. The form of the grant should be, "So long as they continue inhabitants of the parish," or, "So long as they continue inhabitants of the parish, and occupiers of the messuages stated;" the former of these is the more usual, as it gives no notion of annexing to houses (*x*).

354. Because, on the expiration of a faculty limited to a certain period, the right of the parishioners to the pews, the subject-matter of such faculty, revives (*y*).

355. Though the discretion exercisable by the ordinary be of the widest nature, yet it must be a sound discretion having a due regard to times and circumstances and to the rights and interests of all parties concerned: if an unsound discretion be exercised, a party may appeal to a superior tribunal (*z*).

356. It is a matter for appeal, and the Court of Queen's Bench cannot interfere by prohibition; even where the faculty applied for is of a mixed nature, that court will presume that the faculty will be limited to legal objects (*a*).

357. By the Act for Union of City Churches (*b*) the bishop may grant a faculty to alter and re-adjust the seats in the church of the united parish and the appropriation thereof, so that at least half be unappropriated, and the remainder shall be at the disposal of the churchwardens, under the bishop, discharged from all prescriptive and

(*x*) *Tattersall v. Knight*, 1 *Phill.* p. 237.

(*y*) *Blake v. Osborne*, 3 *Hagg.* p. 733.

(*z*) *Butt v. Jones*, 2 *Hagg.* p. 424.

(*a*) *Hallack v. Univ. of Cambridge*, *Ad. & E., N. S.*, 1 *Q. B.* p. 614.

(*b*) 23 & 24 *Vict. c.* 142, s. 28.

other pre-existing rights: this, of course, includes rights under faculties.

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358. As a general rule a faculty, once granted, is good and valid against the ordinary himself, and irrevocable (*c*). If the doubts suggested (as previously mentioned) as to the power of granting such faculties at all be well founded, the (supposed) grants would be, not revocable, but simply invalid.

A faculty is irrevocable if rightly granted.

359. A faculty (for annexing a pew to a house or messuage), obtained by surprise and undue contrivance, may be revoked (*d*).

Revocable if obtained by surprise.

360. The existence of claims to the exclusive enjoyment of pews in the body of the church by faculty or prescription has of late years produced injurious consequences, especially in parishes where there has been a large increase of population (and rural parishes are now, therefore, almost the only exceptions). Sometimes these exclusive rights prevent an arrangement of the church room, the most beneficial for the general accommodation. In some instances these pews remain unoccupied, either from the decay of the houses to which they were originally annexed, or from other circumstances (*e*).

General objections to such faculties.

361. It will also be readily understood that rights at first claimed under the authority of a faculty in process of time merge into the permanence of a prescription. The householder enjoying such a right is naturally a person occupying a leading position and possessing a great influence in the parish, and consequently very little likely to have his title questioned; and thus by mere efflux of time he or his family acquire such a title as neither the

Rights by faculty often merge into prescription.

(*c*) *Fuller v. Lane*, 2 *Add.* p. 431; see also *Knapp & others v. Nicholl*, 2 *Roberts. Eccl. Rep.* p. 364.

(*d*) *Butt v. Jones*, 2 *Hagg.* p. 426.

(*e*) *Report on Eccl. Courts*, 1832, 12mo. ed. p. 131.

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parish nor ordinary can question, though the former are so far deprived of their ancient rights and the latter of his jurisdiction.

Modern faculties carefully recorded.

362. The injury is more serious, if the decision be supported that non-parishioners may prescribe for seats; but, on the other hand, since the records which include the grant of faculties are now very carefully kept and easily accessible, there is less fear in future of the lapse of rights by faculty into rights by prescription.

Interfere with the churchwardens.

363. The duties of churchwardens in seating and arranging the parishioners are too frequently interfered with by *faculties* appropriating certain pews to certain individuals, in different forms and with different limitations; as also by prescriptive rights to pews, which these faculties are supposed to have occasioned (*h*).

Claims often supposititious.

364. In very many instances these exclusive rights are merely supposititious, and would turn out, upon investigation, to be no rights at all (*i*).

Recommendations of ecclesiastical commissioners.

365. The importance of the subject elicited the following recommendations from the commission.

There be no future grant.

1st. That in future no faculties shall be granted permanently annexing to any messuage a pew in the church or chancel (*j*):

Present claims to be investigated by a commission.

366. 2nd. That a commission shall issue in each diocese, directed to the archdeacon or archdeacons, or one or more of the rural deans, requiring them, in conjunction with two other individuals, to make a full investigation as to the pews and seats claimed to be held in each parish church or chapel by faculty or prescription; that where such claims shall be established to the satisfaction of the com-

(*h*) Fuller v. Lanc, 2 *Add.* p. 426; *Report on Eccl. Courts*, p. 131.

(*i*) Fuller v. Lanc, 2 *Add.* p. 427; Pettman v. Bridger, 1 *Phill.* p. 325.

(*j*) *Rep. of Eccl. Com.* p. 132.

missioners, a record of the same, to be kept in the registry of the diocese, should be made (*k*).

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367. The commissioners thought it extremely desirable that all claims, where no faculty or legal prescription exists, should be finally extinguished; but they felt considerable difficulty in suggesting measures to effect that end. When persons claiming such rights decline to come forward before the commissioners to establish them, there seems no hardship in precluding them from asserting a title hereafter; but more doubt might be entertained as to the course fit to be pursued where the claim was asserted but rejected by the commissioners. Expense is so material a consideration in these matters, that they did not feel justified in recommending any mode of trial which would subject the parties to any legal costs. To invest the commissioners with full power finally to determine all these objections would be the course most effectual for their speedy decision (*k*).

All improved
claims to be
extinguished.

368. This recommendation has been to a certain extent adopted in respect to newly built churches, in an act of parliament passed in 1845 (*l*), which directs that, upon the substitution of a new church for an old one and the transfer thereon of parochial rights, the bishop on his own motion, or at the instance of any person claiming a seat by prescription or faculty, shall issue a commission to the arch-deacon and two incumbents and two laymen, who shall examine into all such claims and report to the bishop, who, if satisfied, is to assign seats to those whose claims are proved; and it may be presumed that those who do not make and prove their claims are shut out for the future from such exclusive rights.

Com-
missioners' recom-
mendation
since adopted
on substitution
of new for old
church.

369. Also by the same Act the same principle is applied

And on trans-
fer from cathe-
dral of parish
rights.

(*k*) *Rep. of Eccl. Com.* p. 132.

(*l*) 8 & 9 Vict. c. 70, s. 1.

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where any part of a cathedral has been accustomed to be used as a parochial church, and the rights thereof are transferred to any new church in the parish (*k*).

Rights abandoned by leaving parish.

370. If a man quits his house and leaves the parish, his right to a seat, whatever was the nature or origin of that right, is at an end, because he has ceased to be a parishioner (*l*). (This, however, was said, apparently, without reference to rights by prescription.)

Modern faculty to prevent appropriation.

371. The power of the bishop in the grant of faculties has lately been applied to the purpose of non-appropriation, being an object precisely the reverse of that for which such power had previously been exercised. Upon the petition of the vicar and churchwardens, supported by the vestry, a faculty was granted by the bishop (Lichfield) authorizing certain works proposed to be done by voluntary contributions, and decreeing that all the sittings in the church should be wholly free and unappropriated (*m*).

(*k*) 8 & 9 Vict. c. 70, s. 4.

(*l*) *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*m*) *Ex inform. Reg.*

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION c.

PRIVATE SEATS.

CHAPTER II.

PRESCRIPTION.

CAP. II.
PRESCRIPTION.

372. PRESCRIPTION is the highest kind of title; it cannot be altered by any authority (a). Prescription is highest title.

373. Prescription is thus defined by an early writer:—

Prescription est quant un person claine ascun chose, pur ceo que il, ses ancestors, ou predecessors, ou ceux que estate il ad, ont ew ou use ascun chose dont nul memorie curt al contrarie.

Prescription is when a man claimeth anything for that he, his ancestors, or predecessors, or they whose estate he hath, have had or used anything all the time, whereof no mind is to the contrarie (b). Definition of prescription.

374. And by another author, thus:—

Præscriptio est jus quoddam, ex tempore congruens, auctoritate legum vim capiens, pœnam negligentibus inferens, et finem litibus imponens. Quod non in totum a naturali jure recedit, nec per omnia ei servit. Quemadmodum enim natura æquum est, neminem debere locuple-

Definition by *Reformatio Legum*.

(a) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 195.

(b) *Exp. of Termes of Lawe*, p. 149 (A.D. 1615).

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Prescription by
personal right
or *que estate*.

tari cum alterius jactura: ita naturali rationi congruum est, et negligentibus pœnam inferri, et finem litibus imponi (*c*).

375. Prescription is of two sorts, either a personal right which has been exercised by a man and his ancestors, or a right attached to the ownership of a particular estate and only exercisable by those who are seised of the estate. The first is termed a prescription in the person; the second is called a prescription in *que estate*, which, in plain English, means a right or privilege claimed by prescription as annexed to and going along with particular lands (*d*).

Prescription
differs from
custom. Possession and
time are essential.

376. Prescription appears to differ from custom in being a personal right rather than the right of a class or general right. But to both of these “two things are incident and inseparable, viz. possession or usage, and time. Possession must have three qualities; it must be long, continual and peaceable—*Longa, continua et pacifica*; for it is said, *Transferantur dominia sine titulo et traditione, per usucaptionem; s. per longam, continuam et pacificam possessionem*” (*e*).

Founding
churches
analogous to
highway.

377. Cases of founding churches are analogous to those of the dedication of a highway. It is very seldom that a grant of the soil on which the church is built can be found, but acquiescence in consecration renders the case analogous to a dedication, and the soil afterwards is vested in the ordinary, or in the rector as trustee for the benefit of the parishioners (*f*).

Resembles an
easement.

378. And as regards pews it appears to be more in the nature of an easement. There is strong reason for think-

(*c*) *Reformatio Legum Eccles.*, ed. 1641, p. 246.

(*d*) Shelford *On Real Property*, p. 30.

(*e*) *Coke upon Lit.*, Book II., sect. 170.

(*f*) *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 282.

ing, that an action on the case is maintainable only on the ground of the pew being annexed to a house as an easement, because an action *on the case* is the proper form of remedy for the disturbance of the enjoyment of any easement annexed to land, as in the case of a right of way or a stream of water (*g*).

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379. An easement is defined to be a right of accommodation on another's land, as distinguished from one which is directly profitable (*h*).

Definition of
an easement.

380. In no case, however, has a person a right to the possession of a pew, analogous to the right which he has to his house or land; for *trespass* would lie for an injury to the latter, but for an intrusion into the former, the remedy undoubtedly is by an action *on the case* (*i*).

The right of
possession.

381. The right of sitting in an allotted space of the church has been compared to a right of common of pasture, which may be apportioned. For instance, if a person seised of a messuage and forty acres of land, having a prescriptive right of common on a waste for all commonable cattle, *levant* and *couchant* upon the messuage and forty acres, as to the said messuage and forty acres appertaining, make a feoffment to another of five acres of that land, the common is severable, because the prescription to have common on the land, extends to the whole and every parcel. Thus in a case where by faculty a pew had been granted to A. B. and his family for ever, and the occupiers of the messuage, it was held, that the right to use the pew was attached to the occupier of every part and parcel of that messuage (*k*).

Compared to
right of
common.

382. Oughton mentions it thus:—"In divers parts of

Oughton's
opinion refer-
ring to lords.

(*g*) *Mainwaring v. Giles*, 5 B. & A. p. 361.

(*h*) *Burton On Real Property*, Chap. VI., sect. 3, art. 1165.

(*i*) *Mainwaring v. Giles*, 5 B. & A. p. 361.

(*k*) *Harris v. Drewe*, 2 B. & Adol. p. 168.

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the kingdom, more especially in Wales, particular seats in churches, or rather the right of sitting and hearing divine service in particular seats, belongs, and hath of old, beyond the memory of man, belonged to certain individuals, lords or others, proprietors of dwelling-houses within the parish, so that no other persons have any right to sit in the said seats or disturb such ancient occupiers" (a). This evidently refers to the privilege granted from very early times to the patron or other great person of the parish and not to others.

Doubts as to faculty apply strongly to prescriptive claims.

383. The doubts which have been heretofore expressed as to the validity of the grant of exclusive right under a faculty to seats in other than a chapel or aisle, apply even more strongly to a like claim by prescription, and the wrong done to the parishioners at large is by so much the more serious.

Prescription could thus have no legal beginning.

384. If the ordinary has not such power of granting by faculty the exclusive use of a seat, it is difficult to see how a prescriptive right to a seat, as belonging to a house, can have any just commencement. Because, if there be no means by which a title to a seat can have a legal beginning, it seems strange that prescription should be admitted as evidence, of that which never could have a legal beginning or being,—namely, a legal title (b).

And there is no competent grantor.

385. For where a person cannot make a grant, no valid grant will be presumed. And it was held, before the passing of the Prescription Act (c), that no right of light could be gained by windows, which for upwards of twenty years had looked upon glebe land, because in such a case no valid grant of an easement could be presumed, as the

(a) *Oughton*, tit. XVII., sect. 48: Law's ed., 1844, p. 50.

(b) *Watson*, p. 385.

(c) *Prescription Act*, 2 & 3 Will. IV. c. 71.

rector, being merely tenant for life, never could have had the power to make such a grant (*d*).

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386. It appears, therefore, most consonant with reason, that a person should not prescribe to have a seat in the common part of the church, as peculiar to his house, and that the temporal courts ought not to meddle with the deciding of controversies about such seats, but only the ordinary, who ought to place the inhabitants of each parish within his jurisdiction, according to his discretion (*e*).

Prescription
therefore
appears un-
reasonable.

387. Titles by prescription to pews are not mentioned in the old books; neither is the ordinary's power to give titles, upon which such prescriptions are founded. And Watson is of opinion that the ordinary never had such power, and that such prescriptions are, therefore, unreasonable (*f*).

Prescription
for seats is not
mentioned in
old books.

388. It has been said, that although prescriptions resemble the river Nile, in this respect, that no one can trace their origin, and so no direct reason can be given for them, as they were before the memory of man, yet some probable reason, sufficient to make the prescription reasonable, ought to be given (*g*).

Though origin
be unknown,
some probable
reason should
be shown.

389. Whenever, therefore, there is no proof of a faculty, there may be proof of prescription, founded on such immemorial usage as presumes the grant of a faculty, for the appropriation of a pew to a certain messuage or house (*h*).

A faculty is
therefore pre-
sumed.

390. But where the records of the ordinary's court extend back to the middle of the sixteenth century, being a date previous to the granting of any such faculties, and

Faculties re-
corded in
bishop's re-
gistry.

(*d*) *Baker v. Richardson*, 4 *B. & A.* p. 579.

(*e*) *Watson*, p. 385.

(*f*) *Ibid.* p. 384.

(*g*) *Buxton v. Bateman*, *Siderf.* p. 203.

(*h*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

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the records be found to contain no entry of the grant of faculty for the seat in question, situated in the body of the church, then any claim by prescription for such seat must fail.

Term to be used, if relied on.

391. It is inconvenient not to use the legal term *prescription*, where it is intended to be relied on as a fact (*e*).

Founded on immemorial usage.

392. The only foundation for prescriptive claim to seats is immemorial usage (*f*): and consequently no prescriptive title can be maintained where its origin is known (*g*).

Against common right.

393. In a case (not, of course, referring to church seats, for no such subject for litigation had then arisen), decided in the year 1304, the court said:—

“ Since you affirm your estate by a custom, which custom is against common right, and which custom began by a tort, it is necessary, if you wish to prove your estate by that custom, that you should maintain it by long continuance of time” (*h*).

110 years' use insufficient.

394. Even 110 years has been held insufficient (*i*).

100 years sufficient.

395. But, in another case, where possession for 100 years and upwards was admitted, the court held that it was needless to look to the evidence of use and possession (*h*).

None in church built in 1663.

396. In a church built in 1663, there could be no right by prescription (*l*).

Impossible in a modern church.

397. Consequently in a modern church, arranged under the authority of a local act of parliament, there can be no prescriptive title (*m*).

(*e*) Knapp & others *v.* Nicholl, 2 *Roberts. Eccl. R.* p. 365.

(*f*) Fuller *v.* Lane, 2 *Add.* p. 432; Pettman *v.* Bridger, 1 *Phill.* p. 324.

(*g*) Blake *v.* Osborne, 3 *Hagg.* p. 733; *Co. upon Littleton*, Bk. II. s. 170.

(*h*) *Year Book*, 32nd Ed. I.: ed. by Record Commission, p. 264.

(*i*) Fuller *v.* Lane, 2 *Add.* 432.

(*k*) Knapp & others *v.* Nicholl, *Roberts. Eccl. Rep.* p. 367.

(*l*) Londonderry Cathedral, 8 *Law Times Rep.* p. 863.

(*m*) Spry *v.* Flood, 2 *Curt.* p. 358.

398. Possession for thirty-six years was held to be presumptive evidence of a prescriptive right in a case where the church had been rebuilt about forty years (*u*). (The case was against an intruder, not against the churchwardens or ordinary.)

CAP. II.
PRESCRIPTION.

Presumption in church rebuilt.

399. The ordinary time to which the proof of an ecclesiastical prescription is necessary is, however, very limited, provided the origin be unknown; thirty years constitutes a prescription, and it is not necessary to go further back with evidence of repair (*o*).

Ordinary presumption on thirty years.

400. A prescriptive title, when proved, cannot be altered by any authority. It is, therefore, the highest and best title which a man can have, as it is held to exclude the ordinary (*p*).

Prescription excludes the ordinary.

401. A prescriptive right must be clearly proved—the facts must not be left equivocal; and they must be such as are not inconsistent with the general right (*q*).

Must be clearly proved.

402. In the tenth year of the reign of James I., it was held, by Lord Coke and the other justices, in the case of *Pym v. Gorwyn* (*r*), that a person cannot prescribe for a seat in the body of a church.

One cannot prescribe for seat in body of church.

403. And in the following year, on a prohibition to the Ecclesiastical Court being sued for, upon surmise of a title by prescription, to a seat in the common part of the church, Lord Coke and the other justices answered, that for the title they were not there to meddle with it, this being for a seat in the church; Justice Houghton remarking that the disposition of pews in the church belongs of right to the order and discretion of the ordinary (*s*).

Common law would not meddle with such claim.

(*u*) *Rogers v. Brooks*, 1 *T. R.* p. 431.

(*o*) *Knapp & others v. Nicholl, Roberts. Ecol. Rep.* p. 367.

(*p*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 195; *Fuller v. Lane*, 2 *Add.* p. 425.

(*q*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*r*) *Pym v. Gorwyn, Moor*, p. 878.

(*s*) *May v. Gilbert*, 2 *Bulst.* p. 151.

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PRESCRIPTION.

But left it to
the ordinary.

404. Justice Dodderidge also mentioned a case which he had moved in the Court of Common Pleas, where an action had been brought for the disturbance of a seat in the church, and where he had cited Hall's case, and the case of the gravestone and coat armour, for the taking of which an action *of trespass* was held to lie at common law, and had argued that for the same reason an action *of trespass* should lie for such a disturbance in a seat in the church. But the judges all said that they would not meddle with deciding such controversies for seats in the church, but would leave the same to them to whom it more properly belonged (*n*).

Even when
relating to an
entire aisle.

405. And though an aisle is evidently subject to different considerations they still declined to interfere. Justice Croke said, that in Hall's case a man built an entire aisle in the church, and was at continual charge to repair it; and that it had been held that he had his remedy at common law for a disturbance. But the judges all said, "We are not here to meddle with seats in the church" (*n*).

Titles by pre-
scription are
not ancient, in
Watson's
opinion.

406. Watson says:—"To speak my own thoughts, I conceive that the *ordinary had anciently the power of placing the parishioners in such seats at least as are set in that part of the church repaired by the parishioners according to 8 Hen. VII. c. 12, and that prescriptions to have seats as belonging to houses, and the ordinaries' power to give titles (which are the rise of such prescriptions), are but lately talked of*; for I cannot find *in the old books any mention of such titles by prescription, or power of the ordinary*. And it seems to me that the ordinary hath no such power, and that such prescriptions are not reasonable" (*o*).

(*n*) *May v. Gilbert*, 2 *Bulst.* p. 151; *Hall v. Ellis*, *Noy*, p. 133.

(*o*) *Watson*, p. 384.

407. If the lord of the manor, or any other gentleman of the parish having an estate and an ancient house or messuage therein, has immemorially, he and his ancestors, sat in an aisle of the church, buried their dead there and always repaired it, he may prescribe for it; and cannot be dispossessed of it either by the churchwardens, the clergyman, or the ordinary, and if disturbed he has his remedy. For such immemorial possession will carry with it a presumption that the aisle was first built by the founder, with the consent of the clergyman, patron, and ordinary (*p*).

CAP. II.
PRESCRIPTION.

Prescription for an aisle easy. Presumably built by founder of church, or other.

408. There is no doubt that if the proprietor, or patron himself, has used to dispose of and order the seats by placing persons therein, in such case the ordinary cannot displace them (*q*).

Ordinary cannot interfere.

409. The circumstance that the freehold of a chapel or chancel adjoining or forming part of the church may be in the rector of the parish does not annul the right of a person to its exclusive use, if built and repaired by him and his ancestors from time immemorial, and a place of burial and for hearing divine service (*r*).

If freehold be in rector, it makes no difference.

410. Ayliffe follows thus (based upon Coke's Rep.):—"But if an inhabitant and his ancestors have used time out of mind to repair an isle in the church proper and peculiar to his house, and has been wont to sit there with his domesticks in order to hear divine service, and been likewise accustomed to bury therein, this makes this isle so peculiar to himself and his household, that he cannot be displac'd by the ordinary himself" (*s*), much less can he be interrupted by the parson or churchwardens.

Opinion otherwise as respects an aisle, in Ayliffe's opinion.

(*p*) *Corven v. Pym*, 12 *Co.* p. 105; 3 *Inst.* p. 202, citing above; less strongly, *Godb.* p. 199; *Moor.* p. 878; *Bunton v. Bateman*, 1 *Lev.* p. 71.

(*q*) *Buzzard's case*, 2 *Rolle's Abr.* p. 288.

(*r*) *Churton v. Frewen*, *L. R.*, 2 *Eq.* p. 658.

(*s*) Ayliffe's *Parer.* p. 485, citing 12 *Co. Rep.*, p. 104.

CAP. II.
PRESCRIPTION.

Distinction between chapel or aisle and body of church. Presumptions different.

411. Here then is presented a very wide distinction between a claim in respect to a chapel or aisle and a claim in respect to a seat in the body of the church. It is reasonable to suppose that if a person who builds a chapel or aisle as an addition to the church and for the convenience of himself and his descendants, he and they should possess an exclusive right of user therein (*r*). But that the founder of a church should retain to himself and his descendants a portion of the body of the church, though possible, is not a reasonable thing to presume, and perhaps no single example has ever been proved; and as the use of the body of the church is in the parishioners in common, there is a strong presumption against any exclusive claims until definitely proved. It is therefore more difficult to prove a right by prescription to a pew in the body of the church than to a pew in the chancel or in an aisle.

Presumption against prescription as respects body of church.

412. As a prescription is founded upon a faculty for a seat in the body of the church presumed to have existed, one would anticipate that such faculty, being in derogation of public right, the presumption respecting it would be of the most limited nature *stricti juris*. It, however, seems, on the contrary, to have been viewed in the most favoured light: the ground for this is difficult to imagine.

The Prescription Act.

413. By the Prescription Act, when any right of way or other easement shall have been enjoyed, by any person claiming right to it, without interruption for twenty years, the claim thereto shall not be defeated by showing that it was first enjoyed at any time prior to such period (though it may be defeated in any other way by which it was liable to be defeated before the act); and when the right shall have been so enjoyed for forty years, it shall be deemed absolute and indefeasible, unless it shall appear that it was

(*r*) *Chapman v. Jones, L. R., 4 Ex. p. 281.*

enjoyed by an express consent or agreement, made or given, by deed or writing (*s*).

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PRESCRIPTION.
TION.

414. The question then arises whether, upon the construction of this act, a prescriptive right to a pew is such an easement as may be established on a possessory title of forty years' user by the occupier of a house, all necessary repairs having been done by him; and, consequently, whether the law will presume that such possessory title is founded on a faculty, when it may be well known that no such faculty was ever in existence.

Whether Prescription Act affects pews.

415. Whether the Prescription Act applies to pews is a question which has not yet been tried; but, though the subject is not entirely free from doubt, it is believed that the act does not so apply. Such seemed to be the opinion of Dr. Lushington, when at the bar, in a case laid before him to advise upon (*t*).

Dr. Lushington's opinion.

416. Questions of prescription are triable in the Queen's Bench by *action on the case* (*u*).

Prescription triable in Queen's Bench.

417. Although the ordinary may have a right to dispose of all vacant seats in the aisle, he cannot intermeddle with a temporal right (*x*).

Ordinary cannot meddle.

418. The common law will not suffer the spiritual courts to try prescriptions, apparently because the time in which such prescriptions or customs may be created is different by the ecclesiastical law from what it is at the common law. The former allows of different times in creating prescriptions and customs, and generally less than that at common law (*y*); and inheritances might be affected

Why common law will not suffer spiritual courts to deal with prescriptions.

(*s*) 2 & 3 Will. IV. c. 71, s. 2.

(*t*) MS. opinion.

(*u*) Palm p. 424 (A.D. 1619-29); Hutton's case, *Latch.* p. 116; *Mainwaring v. Giles*, 5 B. & A. p. 361.

(*x*) *Swetnam v. Archer*, 8 *Mod.* p. 338.

(*y*) *Watson*, p. 386.

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PRESCRIPTION.

Only interferes if Spiritual Court is about to try prescription.

And not if prescription be admitted.

Prescription pleaded stops Spiritual Court.

And prohibition will be granted.

A bill in Chancery for quiet possession will not lie.

by adjudging them to be good which by common law are no prescriptions.

419. But where the Spiritual Court has jurisdiction over the subject-matter, it will have jurisdiction equally, whether the claim is founded upon prescription or upon any other right; it is only when the Spiritual Court is proceeding *towards the trial of the prescription* that a claim by prescription furnishes ground for a prohibition (*z*).

420. If the prescription is admitted, the Spiritual Court may go on with the cause, as a defendant does a modus or pension by prescription; and this was the foundation of the consultation in *Jacob v. Dallow* (*a*).

421. But when a prescription is pleaded (and not admitted) in the Spiritual Court, it ties up the hands of the ordinary from any further proceeding, for the Spiritual Court cannot try a prescription (*b*).

422. And, therefore, if a suit be commenced in the Spiritual Court for a seat on account of the prescription, a prohibition will lie for the party sued, because a temporal right is in question,—whether the prescription be good or not, is not for the Spiritual Court to judge (*c*).

423. A bill will not lie to quiet one in the possession of a pew in a church. Thus, when the plaintiff had obtained a decree before the ordinary for an aisle in a church, in A.D. 1676, and brought his bill for the decree of the Court of Chancery to quiet him in possession, the court dismissed the bill with costs, because, as it never executes its own decrees by a bill, without examining the justice thereof, it could not examine whether the bishop had done

(*z*) *Byerley v. Windus*, 5 *B. & C.* p. 21.

(*a*) *Jacob v. Dallow*, 2 *Salk.* p. 551, & 2 *Ld. Raym.* p. 755; *Byerley v. Windus*, 5 *B. & C.* p. 21.

(*b*) *Swetnam v. Archer*, 8 *Mod.* p. 338.

(*c*) *Witcher v. Cheslom*, 1 *Wils.* p. 17.

right, and, besides, such a decree could not bind his successors (*d*).

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424. Though in a remarkable instance of the case of a bill of peace to quiet parties in rights when established, applying to the Court of Chancery to decide their legal rights, and where both parties were assenting, that court proceeded to hear and decide the questions at issue (*e*).

But Chancery may decide if both parties consent.

425. Though the Ecclesiastical Court cannot try the question of prescription, yet it may proceed till prohibited, for the defect is not in jurisdiction but *in modo triationis* (*f*).

Defect of Eccles. Court not in jurisdiction, but mode of trial.

426. When once it appears, by the proceedings in the Spiritual Court, that the prescription, instead of being admitted, is disputed, and that the parties are in progress to bring its existence to trial, the courts of common law are not bound to wait till the parties have incurred the expense of *putting it in issue*, but the prohibition is grantable at once; and it was upon this principle that prohibitions were granted in *Darby v. Cosens* (*g*), and in *French v. Trask* (*h*). It could not be permitted to a party to take the chance of a trial below, and, when that was decided against him, to come to the King's Bench and object to such trial.

Prohibition grantable before putting question in issue.

427. Although the leaning of courts was formerly in favour of presumptions, the course now is for judges to direct juries not to presume an instrument, unless under all the circumstances of the case they actually believe that the particular document once existed (*i*).

Courts are no longer in favour of presumptions.

(*d*) *Baker v. Child*, 2 *Vern.* p. 226.

(*e*) *Churton v. Frewen L. R.*, 2 *Eq.* p. 657.

(*f*) *Knapp & ors. v. Nicholl*, 2 *Roberts. Eccl. Rep.* p. 366.

(*g*) *Darby v. Cosens*, 1 *T. R.* p. 552.

(*h*) *French v. Trask*, 10 *East*, p. 348; *Byerley v. Windus*, 5 *B. & C.* p. 22.

(*i*) *Morgan v. Curtis*, 3 *Man. & Ry.* p. 391; *Livett v. Wilson*, 3 *Bing.* p. 118, and 10 *B. Moore*, p. 439; *Lopez v. Andrews*, 3 *Man. & Ry.* p. 329, note.

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PRESCRIPTION.

Prescription
must be clearly
proved.

Difference be-
tween a pew in
body of church,
and a chapel.

Land, though
site of a chapel,
cannot be ap-
purtenant to
other land or a
manor.

Different as to
pew in body of
church.

428. A prescriptive right must be clearly proved; the facts must not be left equivocal, and they must not be such as are not inconsistent with the general right (*k*).

429. There is a wide difference between pews in a parish church (*i.e.* in the body of the church) which are annexed to dwelling-houses in the parish and lesser chancels or chapels. With regard to pews, it appears to be beyond doubt that they must be annexed to a dwelling of some kind or another. But with regard to chapels or lesser chancels, they are on an entirely different footing. They are beyond the jurisdiction of the ordinary, and may be freeholds of inheritance (*l*).

430. Upon no principle of law is it possible to hold that a freehold piece of land, just because a church or chapel may be built on it, can be held as appendant or appurtenant to other land. In a case where a chapel was not even within the manor the court said it was new to contend that land outside a manor, though in the same parish, could be held to be necessarily appurtenant to the manor or necessarily incidental to the inhabitancy of the manor house, and incapable of being enjoyed in any other way (*l*).

431. In the case of a pew in the body of the church, the considerations are totally different; that part being admittedly for the use of all the parishioners in common, there the presumption is naturally adverse to any exclusive rights, and something more than an imaginary faculty should surely be required. This point does not seem hitherto to have been very clearly expressed, though it is settled that a right by prescription to a seat situated in the body of the church is more difficult of proof than if it were situated in an aisle or chancel; and formerly it was even

(*k*) *Pettman v. Bridger*, 1 *Phill.* p. 325.

(*l*) *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 281.

doubted whether it were possible; in fact, Lord Coke and the other justices so decided in two cases (*m*).

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432. On the other hand it was held in the Exchequer, that the distinction between a seat in an aisle and in the body of the church is merely made a doubt or question in some of the books, but there was no case in support of it, and there is no distinction in the reason of the thing itself (*n*). There is a distinction to be drawn between a gallery and an aisle, inasmuch as a gallery is an erection in the church, while an aisle is an addition to the building (*o*).

Elsewhere said that there is no distinction.

433. But there is no doubt that a person owning the freehold of a private chapel can convey it. It cannot be appendant or appurtenant to a manor in which it is not situate, and the owner has a good right to convey his interest in it to another (*p*).

Chapel may be conveyed without, and cannot be appurtenant to a manor.

434. It is not necessary that the house be situate in the parish if the claim be in respect to a seat in an aisle or chapel (*q*). In the case of an aisle, this might be accounted for on the presumption that the soil on which it stands was originally the property of the person who built it. For it was said by Chief Justice Abbott, that a pew in a chancel may be the freehold of an individual (*r*).

House need not be in the parish.

435. It is not necessary that there should be any actual separation between the chapel, the area of which is claimed by prescription, and the body of the church. There are many chapels constituting to the eye, and being in fact,

Chapel need not be separate from rest of church.

(*m*) *Pym v. Gorwyn, Moor*, p. 878; *May v. Gilbert*, 2 *Bulst.* p. 151.

(*n*) *Lousley v. Hayward*, 1 *Y. & J.* p. 586.

(*o*) *Londonderry Cath., Law Ti.*, 8 *N. S.* p. 863.

(*p*) *Chapman v. Jones, L. R.*, 4 *Ex.* p. 283.

(*q*) *Davis v. Witts, Forr.* p. 14; *Lousley v. Hayward*, 1 *Y. & J.* p. 586; *Churton v. Frewen, L. R.*, 2 *Chanc.* p. 634; *Chapman v. Jones, L. R.*, 4 *Ex.* p. 281.

(*r*) *Mainwaring v. Giles*, 5 *B. & A.* p. 361.

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an integral part of a parish church, and attached to the residence of persons who have landed property in the neighbourhood, and they are frequently treated as freeholds of inheritance (*s*).

Rector's seat
in chancel.

436. The rector's seat in the chancel, unless it be admitted that he holds it for the purposes of taking part in divine service, is somewhat similar; but though the rector or impropriator is entitled to the chief seat (*t*), no particular part of the chancel has been at any time specified.

Seat in aisle or
chapel must
appertain to a
house.

437. The right, if in respect to a seat other than in an aisle or chapel, must be claimed as appurtenant to a house, and not to land without a house (*u*).

Reason for pre-
suming faculty
is necessary.

438. It was said by Lord Stowell that a person claiming a pew must show either a faculty or prescription, which will suppose a faculty. Mere presumption is not sufficient without some evidence on which a faculty may reasonably be presumed (*x*). It is presumed that he was referring to pews in the body of the church.

Elsewhere said
that faculty
need not be
presumed.

439. Referring to a pew in the chancel it was held by the Privy Council, that there is no necessity to travel out of one's way and set up the scarcely tenable presumption, upon which a prescriptive right to a pew is generally said to be based, that the right commenced by a faculty (*y*).

Distinction be-
tween aisle and
body of church
said to be un-
founded.

440. It has also been held, that a pew in the *body* of a church may be prescribed for as appurtenant to a house out of the parish, although the origin of the right to the pew cannot be traced. And that the distinction as to such a prescription for a pew in an aisle, but not in the body of the church, is merely made a doubt or question in

(*s*) *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 281.

(*t*) *Hall v. Ellis*, *Noy*, p. 133.

(*u*) *Pettinan v. Bridger*, 1 *Phill.* p. 325.

(*x*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 322.

(*y*) *Parker v. Leach*, *Moore's P. C. Rep.*, 4 *N. S.* p. 201.

some of the books ; but that there is no case in support of it, and no distinction in the reason of the thing itself (*z*).

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441. But this doctrine may be doubted, because (as it has almost always been held) a prescription presumes a faculty, and it is probable that no faculty could ever have been made by the ordinary in respect of a house *out* of the parish, as a non-parishioner has no common right to cede in return for the exclusive right which a faculty gives ; therefore, such a prescription must fall to the ground (*a*). It may be argued that the house may originally have been within the ecclesiastical district belonging to the church ; but it must be borne in mind that pews did not exist when the present boundaries of parishes were fixed.

But this doctrine questioned.

442. It was said in the report of a parliamentary committee, that as the body of every parish church belongs of common right to all the parishioners, this right cannot lawfully be defeated by any permanent appropriation of particular places (*b*).

Denied by parliamentary commission.

443. A prescriptive title to a pew in virtue of the ownership of an estate is a legal absurdity ; a pew can only be annexed by prescription to a house, and the occupier of the house for the time being is entitled to the use of the pew, and not the owner of the estate (*c*).

Claim in right of an estate absurd.

444. The tenants of land might be non-parishioners and could support no temporal right (*d*). It is in respect to inhabitancy that a pew is to be used (*e*).

It is in respect to inhabitancy.

(*z*) *Lousley v. Hayward*, 1 *Y. & J.* p. 586 ; 7 *Dowl. & Ry.* p. 564 ; see *Barrow v. Keen*, *Siderf.* p. 361.

(*a*) See *Fuller v. Lane*, 2 *Add.* p. 427 ; *Hallack v. Univ. of Cam.*, 1 *Q. B.* 593.

(*b*) *Rep. of Lords' Committee on Spiritual Destitution* (1858), p. xviii.

(*c*) *Woollocombe v. Ouldridge*, 3 *Add.* p. 6 ; *Byerley v. Windus*, 5 *B. & C.* p. 19.

(*d*) *Pettman v. Bridger*, 1 *Phill.* p. 328.

(*e*) *Gibson's Co.* p. 221 ; *Coke, Litt.* p. 121 b. ; *Byerley v. Windus*, 5 *B. & C.* p. 18.

CAP. II.
PRESCRIPTION.

Where messuage not longer existing, prescription fails.

Owner of house cannot restrain occupiers from use of appurtenant pew.

Pew divided if house divided.

Effect of abandonment by one of owners.

Prohibition of bishop granted where wardens claimed independent disposal of seats.

445. In the case of pews claimed as appurtenant by prescription to a messuage or mansion house of an estate which the claimant had purchased, but which messuage is no longer in existence, such claim is bad (*n*).

446. If a seat is appurtenant to a house the owner of the fee cannot restrain his tenant from the use of it, because the seat is for the benefit of the house, namely, for the inhabitants of the house, and not for the benefit of the owner if he cease to inhabit it (*o*).

447. When a right to enjoy a pew is annexed to an old dwelling-house, it may happen that in consequence of such house being sub-divided, three or four families may become entitled to use the pew belonging to the original messuage, and they may require more accommodation. A question may arise how many persons are entitled to use the pew in respect of each of the sub-divisions; but that is a matter to be settled among the respective owners (*p*).

448. There is room to doubt what would be the effect of the abandonment of his right by one of such owners; whether in such case it would revert to the parish, or accrue to the other owners.

449. In the parish of Ludlow the churchwardens, with consent of the parishioners, used to dispose of the seats in the church, and had disposed of certain seats to the bailiffs of Ludlow, which being ruinous, they, by the command of the bailiffs, had pulled down and erected new ones. And as all customs and prescriptions are to be tried at common law, a prohibition of a suit in the bishop's court against the churchwardens for pulling down seats and

(*n*) *Byerley v. Windus*, 5 *B. & C.* p. 19.

(*o*) *Craig v. Watson*, unpub.

(*p*) *Harris v. Drewe*, 2 *B. & Adol.* p. 167.

erecting others without a faculty from the bishop was granted (*g*).

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450. But it was elsewhere decided that parishioners cannot prescribe to dispose of pews to the exclusion of the ordinary: the churchwardens and the major part of the inhabitants cannot jostle out his authority (*r*).

The reverse held in all other cases.

451. As to the mode of trying such questions of prescription a nice distinction was made, where it was said, that if one claims to have a *seat* in a church he may maintain *trespass* for infringing it; but if he only claims *liberty to sit* there, then he has an action *on the case* (*s*).

Distinction between claim to seat and liberty to sit there.

452. Thus, trespass was held to lie where the pew was in a small chancel or aisle (*quâdam cancellulâ*), belonging to the owner's house; and his ancestors and predecessors, time out of mind, had sat in this chancel to hear Divine Service, and had also repaired and locked it. But the reporter of the case thought, without the repair of the aisle *trespass* would not have laid (*s*).

Where trespass will lie.

453. There are many authorities which show that the heir may maintain an action against the parson, or others, for the removal of a tombstone; so also the owner of a pew for violations of the right to enjoy it. In general that right is conferred by the ordinary, and an action *on the case* is the remedy for a mere obstruction (*t*). Therefore an action *on the case*, and not *trespass*, is the proper remedy for the obstruction or disturbance of a pew appurtenant to a house (*u*).

Action on case for obstruction: and not trespass.

454. An action of trespass will not lie for entering into a pew, because the plaintiff has not the exclusive

Claimant has not exclusive possession.

(*g*) Colebach v. Baldwyn, 2 Lutw. p. 1032.

(*r*) Presgrave v. Churchw. of Shrewsbury, 1 Salk. p. 166; Langley v. Chute, Sir T. Raym. p. 246.

(*s*) Dawtree v. Dee, Palm. p. 46.

(*t*) Spooner v. Brewster, 3 Bingh. p. 138; Co. Litt. p. 18 b.

(*u*) Devonshire's case, 36 Eliz., cited in Dawtree v. Dee, Palm. p. 46.

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possession, the possession of the church being in the parson. The word possession must always be understood *secundùm subjectam materiam* (*u*).

Evidence.

Differing as
against disturber or
bishop.

455. In proving a claim by prescription, there is a great difference whether the claim is sought to be maintained as against a disturber, or against the ordinary (*x*). The ordinary has, *primâ facie*, the disposal of all the seats in the church, and a claimant must show some cause, as building, repairing, &c.; but against a stranger who has, *primâ facie*, no right, his possession is sufficient ground (*y*).

Claims against
bishop not
favoured.

456. The law does not favour claims against the ordinary, and good ground must be shown before any right against him can be established (*z*).

Are construed
stricti juris.

457. The general right to pews being in the parish and the ordinary, any particular rights in derogation of these are construed *stricti juris*. It is the policy of our law that few of these exclusive rights should exist; it being the object of the law that all the inhabitants should be accommodated (*a*).

What is necessary to allege,
as against
bishop.

458. As against the ordinary the plaintiff should claim it, in his declaration, as *appurtenant* to a house or messuage in the parish (*b*). He should also allege that he repaired it, but this is not necessary in a dispute with a stranger (*c*).

User always.

459. In all cases user must be proved (*d*); though it need not be specifically pleaded (*e*).

(*u*) *Stocks v. Booth*, 1 *T. R.* p. 430.

(*x*) *Ayliffe's Par.* p. 486; *Buxton v. Bateman*, 1 *Keble*, p. 370.

(*y*) *Ashby v. Freckleton*, 3 *Levinz*, p. 73.

(*z*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 323.

(*a*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*b*) *Stocks v. Booth*, 1 *T. R.* p. 432, citing *Wilson's case*.

(*c*) *Kenrick v. Taylor*, 1 *Wils.* p. 327; *Ashby v. Freckleton*, 3 *Lev.* p. 73.

(*d*) *Frances v. Ley* (Star Chamber), *Croke*, 2 *Jac.* p. 366; *Boothby v. Baily*, *Hobart*, p. 69; *Knapp & ors. v. Nicholl*, 2 *Roberts. Eccl. Rep.* p. 365.

(*e*) *Merchant v. Whitepane*, 2 *Lev.* p. 193.

460. Against a disturber a jury ought to presume everything they fairly can presume, unless all ground of presumption be taken away by the facts disclosed at the trial (*f*).

CAP. II.
PRESCRIPTION.

Presumption
against a disturber.

461. It is impossible to determine *à priori* what evidence will or will not be sufficient to support a right; it must vary in each particular case (*g*).

What evidence
is necessary.

462. It would take very strong evidence to induce a belief that the bishop would grant a faculty to erect a seat in a chancel belonging to a lay or clerical rector (*h*).

And for
chancel seat.

463. Long user and repair are the two main points to be proved in a claim by prescription. Where a church had been rebuilt forty years previously, and the plaintiff was proved to have occupied a seat for thirty-six years, Willes, J., said it was very common, after rebuilding, to leave adjustment to rector and churchwardens, and he supposed the plaintiff got his pew thus, in right of his message. But after so long a possession he would presume anything in favour of the plaintiff (*i*). This was apparently upon the rule of presuming everything that can be presumed as against a wrongdoer. But here it may have been assumed that the right was acquired in the original building, and continued only, not commenced, in the new one.

Long user and
repair are
main points.
36 years suffi-
cient where
church rebuilt
about same
time.

Everything
presumed
against a
wrongdoer.

464. Where it appeared that the seat itself was built thirty-five years ago, for the accommodation of the plaintiff and to put an end to a dispute between two families, this proof was holden to rebut the presumption which would otherwise arise from so long a possession (*k*).

Claim for pew
built thirty-five
years failed.

(*f*) Griffith v. Matthews, 5 T. R. p. 298.

(*g*) Griffith v. Matthews, 5 T. R. p. 298; Pepper v. Barnard, 12 Law J. (Q. B.) p. 361; and 7 Jur. p. 1128.

(*h*) Morgan v. Curtis, 3 M. & Ry. p. 390.

(*i*) Rogers v. Brooks, cited in Stocks v. Booth, 1 T. R. p. 431, n.; Morgan v. Curtis, 3 M. & Ry. p. 394.

(*k*) Griffith v. Matthews, 5 T. R. p. 298.

CAP. II.
PRESCRIPTION.

Sixty years' possession is insufficient.

465. Possession of a pew in a church for above sixty years is not a sufficient title to maintain an *action on the case* for disturbance in the enjoyment of it; the plaintiff must prove a prescriptive right, or a faculty, and should claim it in his declaration *as appurtenant to a messuage* in the parish (*l*).

House built eighty years insufficient.

466. In a claim for prescription for pew as appurtenant to a house, it appeared that the house had been built only eighty years, which was not sufficient to give a prescriptive right; because it might be presumed that evidence of the grant of a faculty was not extinct in that time (*m*).

Thirty-eight years of chancel seat by tenant of manor house.

467. Occupancy for thirty-eight years of a pew in the chancel by the tenant, and with permission of owner of house to which it was claimed as appurtenant, is sufficient to enable occupier to successfully maintain a suit for perturbation of seat against the incumbent who had pulled down the pew (*n*).

Thirty-five years' possession is sufficient as against disturber.

468. In an action for disturbance evidence of continued possession for thirty-five years, unanswered and unexplained, would have been sufficient to support the plaintiff's claim (as against disturber); and it was said that a jury would have been warranted in presuming that a faculty had been granted to the plaintiff's ancestor to build this pew in the chancel. But the case was not decided upon this ground, as it was shown that the site had been previously occupied by an open seat in common occupation, which destroyed the presumption (*o*).

Non-user accounted for.

469. Non-user for twenty years would be nearly, if not quite, conclusive against a claim by prescription (*p*). And

(*l*) *Stocks v. Booth*, 1 *T. R.* p. 428.

(*m*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 319.

(*n*) *Parker v. Leach*, *Moore's P. C. Rep.*, 4 *N. S.* p. 180.

(*o*) *Griffith v. Matthews*, 5 *T. R.* p. 298.

(*p*) *Pettman v. Bridger*, 1 *Phill.* p. 328.

the reason why a pew has for a long time been unoccupied by the owner may be explained to the jury. Thus, where the plaintiff was of the Roman Catholic religion, and her servants had frequently been of the same persuasion, the use of two pews belonging to the house was much less than, under other circumstances, would have been expected; and this was stated as accounting for the non-user (*g*).

CAP. II.
PRESCRIPTION.

470. An occupation by a person and his ancestors, even for 110 years, has been held insufficient, it appearing that at the commencement of that time the pew was annexed by an agreement with the vestry (*r*).

So 110 years' possession commencing with grant by vestry.

471. In a case where a pew in the chancel was built by the rector in 1797 for the occupation of his family resident in a new house, and after his death used by the tenants of the same house till 1829, and a question then arose whether the pew had become appurtenant to the house, it was considered that no prescriptive rights had been acquired (*s*).

Thirty-two years insufficient for seat in chancel.

472. Length of time avails nothing where the origin is known (*t*).

Plea of time fails if origin be known.

473. In one case where a pew was prescribed for in respect of a house, affidavits were made that the person so prescribing was not nor is an inhabitant there; but it was held that *possession* only, without living there, is enough (*u*). But this may be doubted.

Possession without inhabitancy of house sufficient(?).

474. On the other hand it was held that, as a pew would generally go with a house, mere occupation *alone* is not sufficient to force the jury to find a right (*v*).

Occupation alone not sufficient.

475. Repair by the claimant is also generally deemed

Repair is generally necessary.

(*g*) *Pepper v. Barnard*, 7 *Jur.* p. 1129.

(*r*) *Fuller v. Lane*, 2 *Add.* p. 432.

(*s*) Opinion of Dr. Lushington (MS.).

(*t*) *Blake v. Usborne*, 3 *Hagg.* p. 733.

(*u*) *Vin. Abr.* "*Prohibition*" (G.); *S. C.* Anon. 12 *Mod.* 40.

(*v*) *Morgan v. Cartis*, 3 *M. & Ry.* p. 394.

CAP. II.
PRESCRIPTION.

Doubted whether essential even against wardens.

Not necessary against disturber.

Formerly undecided where no repairs have been necessary.

Now held not absolutely necessary.

But, if any, must have been done by inhabitants of house.

Aisle belongs to parish, if repairers.

a necessary element in support of his claim (*x*); though not in respect to a seat in the chancel as against a disturber (*y*).

476. In the case of *Pepper v. Barnard* (*z*), the court would not decide whether, in an action against churchwardens for disturbance of a pew, proof of repairs is necessary.

477. It is otherwise as against a disturber, for it is a rule of law that one in possession need not show any rule or consideration against a wrongdoer.

478. What might be the effect of a very long occupancy, where no repairs have been *necessary*, does not appear to have been decided (*a*).

479. But it was held in a modern case, that evidence of the fact of repair is not absolutely necessary, simply because repair may not, within the memory of any one living, have been required (*b*).

480. If any repairs have been required within memory, it must be proved that they have been made at the expense of the party setting up the prescriptive right. The *onus* and *beneficium* must go together:—mere occupancy does not prove the right (*c*).

481. When an aisle has been used to be repaired at the charge of all the parish in common, the ordinary may appoint whom he pleases to sit in it, notwithstanding any usage to the contrary (*d*).

(*x*) Ayliffe's *Parer*. p. 486; *Frances v. Ley*, *Croke*, 2 *Jac.* p. 366; *Boothby v. Bailey*, *Hobart*, p. 69; *Buxton v. Bateman*, 1 *Keble*, p. 370; *Woollocombe v. Ouldrige*, 3 *Add.* p. 6.

(*y*) *Buxton v. Bateman*, 1 *Keble*, p. 370.

(*z*) *Pepper v. Barnard*, 7 *Jur.* p. 1129.

(*a*) See *Pettman v. Bridger*, 1 *Phill.* p. 325.

(*b*) *Knapp v. Nicholl*, 2 *Roberts. Eccl. Rep.* p. 366.

(*c*) *Pettman v. Bridger*, 1 *Phill.* p. 325.

(*d*) *Frances v. Ley*, *Cro. Jac.* p. 366.

- | | |
|---|---|
| 482. Very slight repair will, therefore, suffice; and, as thirty years in the Ecclesiastical Courts constitute a prescription, it is not necessary to go back further with evidence of repair (<i>e</i>). | CAP. II.
PRESCRIPTION. |
| 483. Cleaning done by the parish is not repair to affect a prescriptive right (<i>f</i>). | Evidence of repair during thirty years sufficient.
Cleaning is not repair. |
| 484. Lining a pew and putting in cushions is not to be a repairing, or an act of ownership, it being a mere question of comfort (<i>g</i>). | Nor lining. |
| 485. Constant sitting and burying, without using to repair, does not suffice (<i>h</i>). | Sitting and burying alone not sufficient. |
| 486. The fact of repair must be pleaded in order to maintain a claim as against the ordinary (<i>i</i>). | Repair must be pleaded as against bishop. |
| 487. If repair were at any time done at the expense of the parish, that circumstance would tend strongly against a claim by prescription (<i>k</i>). | Repair by parish adverse to prescription. |
| 488. The ordinary has <i>primâ facie</i> the disposal of all the seats in the church, and against him a title or consideration must be shown in the declaration and proved (<i>l</i>). | Title must be pleaded and proved as against bishop. |
| 489. As against a disturber the plaintiff may declare upon his possession, without alleging usage to repair, prescription, or other ground of action, for that may be proved in evidence (<i>m</i>). | Sufficient to plead possession as against disturber. |

(*e*) Knapp *v.* Nicholl, 2 *Roberts. Eccl. Rep.* p. 367.

(*f*) Churton *v.* Frewen, *L. R.*, 2 *Ex.* p. 657.

(*g*) Morgan *v.* Curtis, 3 *M. & Ry.* p. 393; Pettman *v.* Bridger, 1 *Phill.* p. 332.

(*h*) Frances *v.* Ley, *Croke*, 2 *Jac.* p. 366.

(*i*) Stedman *v.* Hay, 1 *Comyn's Rep.* (2nd ed.), p. 368; Bradbury *v.* Burch, 1 *Jones*, p. 4; Ashby *v.* Freckleton, 3 *Lev.* p. 73; Fuller *v.* Lane, 2 *Add.* 427.

(*k*) Knapp *v.* Nicholl, 2 *Roberts. Ecc. Rep.* p. 366; Frances *v.* Ley, *Croke*, 2 *Jac.* p. 366.

(*l*) Burn's *Eccl. L.* p. 362; Kenrick *v.* Taylor, 1 *Wilson*, p. 326.

(*m*) Comyn's *Dig.* "Action on Case for Disturbance" (A. 3); 1 *Lev.* p. 71; 2 *Lev.* p. 193; 3 *Lev.* p. 73; 1 *Sid.* pp. 88, 203.

CAP. II.
PRESCRIPTION.Usual form of
declaration.

490. The usual mode of declaring in an *action on the case* for disturbance is, to the effect that the plaintiff was possessed of a certain messuage, and, by reason thereof, ought to have for himself and family, inhabiting the said messuage, the use and benefit of a certain pew in the chancel (or otherwise) of the church of . . . to hear and attend divine service therein, as to the said messuage belonging and appertaining (*m*).

Repair of one
pew, evidence
as to all under
same title.

491. An *action on the case* being brought against the churchwardens, it appeared, that so far as living memory extended, there had been three pews adjoining each other—one used by the family, another by their servants, and a third by a farmer residing on a farm, the house belonging to which was the ancient mansion of the family. It was held that proof of repairs done to one of these pews was evidence as to all, and, therefore, included the pew in question (*n*).

Repair by a
corporation
good.

492. It has been held a good prescription to say, “that time out of mind the corporation did repair such an aisle of the church, *ratione cujus* the mayor and aldermen sat there.” For though the right be in the whole body, the enjoyment may be and enure to a select number (*o*).

Cost may be
charged to
borough.

493. Where the members of a corporation have, as such, occupied a particular pew in the parish church, the repairs of it may be properly charged on the borough fund (*p*).

Rebuilding by
parish acts as a
cession.

494. Where a pew has been rebuilt by the parish, there would be a cession of the pew to the parish, unless some express agreement to the contrary could be shown (*q*).

(*m*) *Stocks v. Booth*, 1 *T. R.* p. 430; and see *Morgan v. Curtis*, 3 *M. & Ry.* p. 389.

(*n*) *Pepper v. Barnard*, 7 *Jur.* p. 1128.

(*o*) *Jacob v. Dallo*, 6 *Mod.* p. 231.

(*p*) *Reg. v. Mayor of Warwick*, 10 *Jur.* p. 262, and 15 *L. J., Q. B.* p. 306.

(*q*) *Pettman v. Bridger*, 1 *Phill.* p. 329.

495. But where the pew has been destroyed by the parish in consequence of the rebuilding of the church, and without the consent of the owner, that fact could not divest him of his right to a pew built on the same spot (*r*).

CAP. II.
PRESCRIPTION.

Not so when destroyed by rebuilding the church.

496. Payment of rent proves that those who paid it could have no exclusive rights either by faculty or prescription (*s*).

Rent is conclusive against claim.

497. An old entry in the vestry book, signed by the churchwardens, stating that the pew had been repaired by a former owner of the messuage, under whom the plaintiff claimed, in consideration of his using it, was held to be admissible evidence in support of the plaintiff's right, as having been made by the churchwardens within the scope of their official authority (*t*). (So given by Taylor on Evidence (*u*). *Sed quære*. As reported, the entry seems rather to indicate a commencement of occupation, and, by showing the date of origin, to put an end to a claim by prescription).

Entry in vestry book by wardens good evidence.

498. But old entries in a vestry book made by a churchwarden, apparently not in the discharge of any public duty, and by which he has not charged himself, but merely memoranda of repairs done, are not evidence (*x*).

But not unless officially entered.

499. A hatchment and inscription, certainly more than 100 years old, though not thrown out of consideration, but giving it all its just weight, is only an element in the case of ownership (*y*).

Hatchment and inscription may assist proof.

500. The fact of a pew having formerly been open would operate very strongly against any claim to a prescription, because the difference between an open and a

Strong adverse probability where pew was formerly open.

(*r*) *Swetnam v. Archer*, 8 *Mod.* 338.

(*s*) *Parham v. Templar*, 3 *Phill.* p. 518.

(*t*) *Price v. Littlewood*, 3 *Camp.* p. 288.

(*u*) Taylor on Evidence, p. 1415, par. 1578.

(*x*) *Cook v. Banks*, 2 *C. & P.* p. 478.

(*y*) *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 283.

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PRESCRIPTION.

closed pew is so strong, that the probability is, that so soon as the party had ascertained his rights, he would inclose ; the fact of the seat having formerly been open, destroys the prescription (*y*).

Enlarging
gives strong
adverse infer-
ence.

501. The fact of enlarging a pew, though it would not of itself destroy the prescriptive right, may operate on a jury as to the existence of such prescriptive right ; since if it existed, the party would have put it in hazard by the enlargement (*z*).

Priority in
seat may be
prescribed for.

502. Where a man claimed the upper place in a seat in the church, and was disturbed in a violent manner ; and the bishop sent an inhibition against the former until the matter should be determined before him ; a prohibition was granted, because as well the priority in the seat as the seat itself may be claimed by prescription (*a*).

Also any par-
ticular place in
a seat.

503. In like manner may an inhabitant, in respect of his house, prescribe to first, second or third place in the same seat, which has immemorially been repaired by him, and the rest who jointly sit with him (*b*).

In contentions
about priority,
bishop may
inhibit tem-
porarily.

504. If there be any contention about the priority, the bishop may inhibit them from making a disturbance until the controversy be tried in the temporal court, and may excommunicate the disturbers (*c*).

Joint prescrip-
tion, whether
tenancy in
common or
otherwise.

505. If two pretend to have title to a seat by prescription, and thereupon jointly bring an *action on the case* for a disturbance, and declare upon a joint right and prescription ; if upon the evidence it shall appear that they are not joint tenants, but tenants in common, they cannot recover, but must be nonsuited. Because such evidence does not

(*y*) *Morgan v. Curtis*, 3 *M. & Ry.* pp. 390, 392.

(*z*) *Ibid.* p. 393.

(*a*) *Carleton v. Hutton*, *Noy*, p. 78, and *Latch*, p. 116, and *Palm.* p. 424.

(*b*) *Pridd.* p. 300.

(*c*) *Carleton v. Hutton*, *Noy*, p. 78, and *Latch*, p. 116, and *Palm.* p. 424; *Buxton v. Bateman*, 1 *Sid.* p. 89.

maintain the title upon which they bring their action, and as tenants in common they cannot make a joint prescription, but ought to prescribe severally (*d*).

CAP. II.
PRESCRIPTION.

506. As to the abandonment of an admitted right by prescription, there seems a doubt as to the necessary means. In a case where the owner of a chapel agreed that the churchwardens should partition off and fit up part, and place parishioners there; which being done at the expense of the parish, he revoked the permission and brought an action against the churchwardens for disturbance; it was held in the Queen's Bench, on the authority of *Wood v. Leadbitter*, that there having been no deed there was no grant, and the plaintiff might revoke the licence (*e*).

Abandonment
of right by
prescription.
Grant under
seal necessary.

507. *Sed quære*. It is not an easement in land; the plaintiff has nothing in the soil of the pew, nor does the agreement profess to convey any easement to the defendant, which distinguishes it from that case. An easement cannot be granted save by deed. Had this licence been to do an act on the plaintiff's soil, it might have been revocable as being a grant of an easement, and yet not under seal; but it is to do an act on the soil of another, for the pew is the rector's freehold (*f*). (As to abandonment of right of way by non-user, *Ward v. W.*, 21 *L. J.* (*Exch.*) 334; and *Queen v. Chorley and anor.*, 12 *Q. B.* 515.)

Doubt as to
necessity for
grant under
seal.

508. In the case referred to as the authority for the decision, it was held that a licence under seal, if a mere licence, is as revocable as a licence by parol; and a licence by parol coupled with a grant of a nature capable of being made by parol, is as irrevocable as a licence by deed. But a licence by parol, coupled with a parol grant or pretended grant of something which can only be granted by deed, is

Licence, if not
necessarily
under seal,
is revocable by
parol.

(*d*) *Snelgrave v. Brograve*, *Palm.* p. 161; *Watson*, p. 387.

(*e*) *Adams v. Andrew*, 15 *Q. B.* p. 284.

(*f*) *Oliphant*, pref. xv.; referring to *Adams v. Andrews*.

CAP. II.
PRESCRIPTION.

Permitted
use by tenant
for twenty
years is vir-
tually an aban-
donment.

a mere licence: it is not an incident to a valid grant, and is therefore revocable (*g*).

509. A pew annexed to a mansion by a prescriptive title, and formerly used by the servants of the family, had been occupied upwards of twenty years by a tenant of some of the land belonging to the estate. This tenant continued to use the pew until his death, which took place three years after the expiration of his tenancy. The owner of the mansion had lined and cushioned the pew to accommodate his visitors, when that in his own occupation was full. It was held that the fact of another person (a tenant on the estate), having had possession for so long a time, was virtually an abandonment of the right to the pew (*h*).

Facilities for
surrender
given by Act of
1869.

510. By an Act passed in 1869, whenever by virtue of any public or private act, or any deed or instrument, any sittings in a church or chapel of the Church of England are subject to any trust as to the grant, demise, sale or disposal thereof, or are the private property of any person, the trustees or other persons are empowered to surrender the same absolutely by deed to the bishop, or the ecclesiastical commissioners; and such sittings then become subject to the same laws, as to all rights and property therein, as the pews and sittings of ancient parish churches are now subject to (*i*).

Materials in
nature of heir-
loom.

511. The property in the materials of a pew held, or once held by prescription, resembles that in a monument, and is in the nature of an heirloom (*k*).

What are heir-
looms.

512. And heirlooms are such things as go by special custom and not by common law (*l*); the termination *loom*

(*g*) Wood v. Leadbitter, 13 M. & W. p. 838, and Law J. Rep., 14 N. S., Ex. p. 161.

(*h*) Pettman v. Bridger, 1 Phill. p. 331.

(*i*) 32 & 33 Vict. c. 94, ss. 2, 3 & 5.

(*k*) Corven's case, 12 Co. Rep. p. 106; 3 Blackst. Com. p. 429.

(*l*) 14 Vin. Abr. p. 291.

is derived from the Saxon word Leome, which signifies a limb, branch or member (*m*), so that an heirloom is nothing else but a limb, branch, or member of the inheritance (*n*).

CAP. II.
PRESCRIPTION.

513. Now, monuments, coats of arms painted in the windows or elsewhere, pennons, hatchments, &c., put in the church for the memory of the deceased buried there, are a sort of heirlooms, and when once regularly set up they cannot be pulled down again, either by the churchwardens, minister, or ordinary, because they belong to the heir (*o*).

Monuments are a sort of heirloom.

514. The right of property in the wood-work of a pew, held by a prescriptive title and good against the ordinary, appears to be similar to that in a monument. In each case the material is attached to the parson's freehold, and in neither case can he pull the erection down (*p*). And Mr. Justice Dodderidge seems to have been of this opinion in the case he mentioned during the argument in Gilbert's case (*q*).

Wood-work of a pew held by prescription is similar.

515. Now, as the property in monuments, tombs, &c., remains in the heir (*r*), and does not go to the parson, who has the freehold, it would seem that, *à fortiori*, a person erecting a pew, or the owner of one already erected, on a place to which he has a prescriptive right against the ordinary, in respect of a house or messuage in the parish, has some property in the wood-work of the pew.

So owner of pew has property in its materials.

516. And in the celebrated case of Lady Wyche, in 1468, which was a suit in the King's Bench against the parson for removing the coat-armour and pennons of arms

Lady Wyche's case in 1468.

(*m*) Bosworth's *Anglo-Saxon Dic. s. v.*; 2 *Bla. Com.* p. 427; *Co. Litt.* p. 18 b.

(*n*) 2 *Steph. Com.* p. 242 (6th ed.).

(*o*) *Prid.* p. 101; 3 *Co. Inst.* p. 202; Corven's case, 12 *Co. Rep.* p. 105.

(*p*) See Degge, pt. 1, cap. xii.

(*q*) *May v. Gilbert*, 2 *Buls.* p. 151.

(*r*) Degge, pt. 1, cap. xii.

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and sword of Sir Hugh Wyche, her late husband, from the chapel where he was buried; and was decided in her favour. The reporter or compiler adds: "Query as to this matter, for I understand that the oblation shall be adjudged according to the intent of the donor" (*s*).

Cloth provided by parish and hung up in church, rector cannot remove.

517. And even in a case where black cloth had been hung up in a church, in memory of the Princess Charlotte, and no agreement had been entered into with the rector, it was held, by Mr. Justice Bayley, that the rector had no right to take any of the cloth, because by law he was not entitled to take such a property, unless by matter of agreement with the parties to whom it belonged (*t*).

Materials of pews erected by others do not belong to clergy or wardens.

518. The churchwardens cannot claim the materials of pews they have *not put up*, and the clergyman has them only when the pew has been built by a person having *no right to put them there*: therefore the property in the materials of a pew built by a person having a prescriptive title, is neither in the clergyman nor churchwardens.

Apparently to owner of pew.

519. Consequently, assuming, as it has been decided, that a person can have a prescriptive right to a pew against the ordinary, the materials, when taken down, would certainly seem to belong to the owner of the pew.

Action for pulling down, not maintainable by invalid grantee.

520. As a grant of a part of a chancel, by a lay impropriator to a man and his heirs and assigns, is not valid in law, the grantee or those claiming under him cannot maintain an action for pulling down pews there erected (*u*).

Claims for prescription frequent cause of litigation.

521. One very detrimental effect arising from prescriptive titles is their giving rise to an infinite number of claims founded on possession only, and which, should they be investigated, might not be legally maintainable. Since,

(*s*) *Year Book*, 9 Ed. IV. (ed. 1597, p. 14).

(*t*) *Cramp v. Bayley*, Degge's *P. C.*, Ellis' ed. p. 218, n.

(*u*) *Clifford v. Weeks*, 1 *B. & A.* p. 498.

for practical purposes, it is not easy to define what is absolutely necessary to constitute prescription, claims are set up of a doubtful character, which greatly impede the churchwardens, and in some cases the court, in making arrangements for the distribution of the church room, which the interests of the parish most require (*v*).

522. Prescription is said to be the highest kind of title, and one which can only be altered by Act of Parliament. A recent Act has lately meddled with such titles. The Act for uniting city churches provides that where parishes have been united, the bishop may issue a faculty to alter and re-adjust the seats and their appropriation, so that at least half be unappropriated; and the remainder shall be at the disposal of the churchwardens (under the control of the bishop) for the use of the parishioners of the united parishes, discharged from all prescriptive and other pre-existing rights (*x*).

CAP. II.
PRESCRIPTION.

Prescription
affected by Act
for union of
city churches.

523. As it has already been stated, the Ecclesiastical Court has power to try all questions respecting pews, except where a prescriptive right intervenes and is not admitted (for if the prescription be admitted the Ecclesiastical Court may go on with the cause [*y*], because it has jurisdiction over the subject-matter).

Jurisdiction of
Ecclesiastical
Court.

524. In like manner the interference of any other court with the Ecclesiastical Court may be stopped by prohibition. Thus in a suit before the Court of High Commission at York against a clergyman for non-residence, disturbing some of the congregation in church, and other disorderly conduct, a prohibition was granted, for the complaint in such matters ought to be made to the ordinary (*z*).

Prohibition of
any other court
interfering.

(*v*) *Report on Eccl. Courts*, 1832, 12mo. ed. p. 131.

(*x*) 23 & 24 Vict. c. 142, s. 28.

(*y*) *Jacob v. Dallow*, 2 *Salk.* p. 551, and 2 *Ld. Raym.* p. 755; *Fall v. Hutchins*, 2 *Corp.* p. 424.

(*z*) *Howson's case*, *Litt. Rep.* p. 152.

CAP. II.
PRESCRIPTION.

Prohibition
may be granted
by King's
Bench, Ex-
chequer or
Chancery.

Abuses arising
from lavish
prohibitions at
one time.

Grounds of
prohibition are
defect of juris-
diction, or in
mode of trial.
Ecclesiastical
Court cannot
try question of
fact.

525. Where there is a question of prescription to be tried, the power of the Ecclesiastical Court ceases (except by consent of parties), and any attempt to exercise such power may be at once met by a prohibition granted by the King's Bench (*z*), or Exchequer (*a*), or Chancery (*b*).

526. It would appear from certain *Articles touching abuses in the granting of Prohibitions*, exhibited by Archbishop Bancroft, in the name of the whole clergy, to the Lords of the Privy Council in 1603, that prohibitions of the Ecclesiastical Courts were granted freely and often on very frivolous pretences, at any time in the suit and after several sentences, and even at the instance of the plaintiff in the suit; causing great expense, and repeatedly to the extent of as many as six prohibitions and consultations in one suit; and were only removable by consultation after a length of time, and at great cost, although the prohibition was granted quickly, on *ex parte* statement and in chambers. And the king's authority was greatly impugned by such prohibitions (*c*). The subject continued for a long time under consideration (*d*).

527. The general grounds of a prohibition to the Ecclesiastical Courts are either a defect of jurisdiction, or a defect in the mode of trial. If any fact be pleaded in the Ecclesiastical Court and the parties are at issue, that court has no jurisdiction to try it, because it cannot proceed according to the rules of common law, and in such case a prohibition lies. Or where the Spiritual Court has no original jurisdiction a prohibition may be granted (*e*).

(*z*) *Witcher v. Cheslom*, 1 *Wilson*, p. 17.

(*a*) *Smyth's case*, 2 *Crompt.*, *Mees.* § *R.* p. 754.

(*b*) 1 *Peere Wms.* p. 43.

(*c*) 2 *Coke's Inst.* p. 602.

(*d*) As appears, *e. g.*, from a letter from the Archbishop to the Bishop of Worcester in 1608-9, Worcester Registry, *Reg. Bullingham*.

(*e*) *Leman v. Goulty & anor.*, 3 *T. R.* p. 4.

528. But otherwise if the prescription be admitted as a defendant does a modus or pension by prescription (*f*).

CAP. II.
PRESCRIPTION.
TION.

529. The Spiritual Court may in several cases proceed upon libels grounded on prescription where the prescription is not denied (so that such suits are not absolutely *coram non judice*); and the reason why a prohibition shall be granted where the prescription or custom is denied, seemeth to be this; that the notion of customs and prescriptions is different, by the ecclesiastical law, from what it is at common law as to the time in which such custom or prescription may be created; for the ecclesiastical law allows of different times in creating customs or prescriptions, and generally of less time than is allowed of in common law, which owns no time in such case, but that whereof there is no memory of man to the contrary (*g*).

May proceed if prescription be admitted.

Reason for prohibition, in differing time of prescription.

530. Prohibitions are granted either absolutely, or *quousque*, only till such an act be done; *e.g.* the denial of a copy of the libel, when the prohibition is *ipso facto* discharged by granting the copy. The first of these is peremptory, and ties up the inferior jurisdiction until a consultation; the second is *ipso facto* discharged upon performing the act (*h*).

Prohibition is either absolute or *quousque*.

531. A prohibition is commonly said to be a charge, by the king's writ, directed to the Spiritual Court, forbidding them to proceed further in a certain cause then depending, formerly upon a suggestion, but now on an affidavit, either that the cognizance of the cause does not belong to them; or that they are dealing with some point beyond their jurisdiction; or that they are proceeding otherwise than the law warrants (*i*).

Definition of prohibition.

(*f*) Jacob *v.* Dallow, 2 *Salk.* p. 551, and *Ld. Raym.* p. 755.

(*g*) Watson, c. 39; Burn, p. 366.

(*h*) Bac. *Abr.* "Prohibition" (F); Anon. 6 *Mod.* p. 308.

(*i*) Aycliffe's *Parerg.* p. 435; Wood's *Inst.* p. 525.

CAP. II.
PRESCRIPTION.

Granted for want or excess of jurisdiction, or for defect of trial.

Prohibition when plea of prescription was rejected.

For a seat, only on account of prescription.

Unsound discretion is subject of appeal, not prohibition.

Want of original jurisdiction is fatal.

532. Prohibition may be granted where it is shown that the court is proceeding contrary to the general law of the land, or beyond its jurisdiction (*h*), and either from want or excess of original jurisdiction or defect of trial; thus where an issue is raised upon a question of fact, which can only be tried by a jury in the temporal court (*i*).

533. In a suit in the Ecclesiastical Court upon an application for a faculty for a seat, a prescriptive right to the pew as appurtenant to a messuage and always repaired, was pleaded in opposition; but the court rejected the plea. Prohibition was granted both for want of jurisdiction and want of trial (*k*).

534. Where a person is sued in the Ecclesiastical Court for a seat in the church, if he would obtain a prohibition and oust the ordinary of jurisdiction, he must show such a legal title as cannot be tried in the Ecclesiastical Court, and this can only be by prescription (*l*).

535. If an unsound discretion be exercised by the Ecclesiastical Court, it is a ground of appeal (*m*). Thus if the ecclesiastical judge give a wrong sentence on the merits, where he has jurisdiction, that is the subject-matter of appeal, and *not* of prohibition (*n*).

536. It is very clear that an Ecclesiastical Court cannot proceed in any cause, where it has not an original jurisdiction of the subject-matter; and if it does, a prohibition goes of course (*o*).

(*h*) *Ex parte Smyth*, 2 *Crompt.*, *M. & R.* p. 754; and 5 *Nev. & M.* p. 149; 5 *Adol. & E.* p. 724; 1 *Har. & W.* p. 419.

(*i*) *Byerley v. Windus*, 5 *B. & C.* p. 1; *Hallack v. Univ. of Cam.*, 1 *Q. B.* p. 615.

(*k*) *Swetnam v. Archer*, 8 *Mod.* p. 338.

(*l*) *Stedman v. Hay*, 1 *Com. R.* p. 368.

(*m*) *Butt v. Jones*, 2 *Hagg.* p. 424.

(*n*) *Leman v. Goulty*, 3 *T. R.* p. 5; *Griffin v. Ellis*, 11 *A. & E.* p. 756.

(*o*) *Darby v. Cosens*, 1 *T. R.* p. 555.

537. Thus prohibition lies when one sues another in the Spiritual Court for a lay fee, that is, for lands or tene-ments, &c. (*p*).

CAP. II.
PRESCRIP-
TION.

538. And if one sues another in the Spiritual Court for a chattel, a debt or a trespass, prohibition lies (*q*).

As in suit for
a lay fee.
Or for a chat-
tel or trespass.

539. Thus a prohibition was granted to stay a suit in the Spiritual Court, for breaking open a chest in the church, and taking away the title-deeds of the advowson, because the title-deeds being subject of the suit, only *trespass* or *trover* could be maintained in the temporal courts for taking them (*r*).

Or for break-
ing open a
chest and tak-
ing away title-
deeds of ad-
vowson.

540. But where a person was libelled in the Spiritual Court for taking the church bells, the Court of Queen's Bench refused to grant a prohibition, because though the churchwardens might have maintained an action at common law, the most proper remedy was in the Spiritual Court (*s*). The parties who libelled being *custodes* of the property, and the bells being the goods of the church (*t*).

Spiritual
Court has
jurisdiction
respecting re-
moving the
church bells.

541. A person (? parson) libelled against the defendant in the Spiritual Court of York for having cut elms in the churchyard; and a prohibition was granted, upon sugges-
tion that they grew on his freehold (*u*).

Nor for cutting
trees in
churchyard.

542. And a suit cannot be maintained in the Ecclesiastical Court, against a churchwarden, for breaking a church wall, and cutting down the boughs of trees in a church-
yard. For the rector having a freehold in him has a right to bring his action; and, therefore, the party must

Nor for break-
ing church
wall.

(*p*) *F. N. B.* p. 40 (I.); *Vin. Abr.* "Prohibition" (F. 1).

(*q*) *F. N. B.* p. 40.

(*r*) *Gardner v. Parker*, 4 *T. R.* p. 351.

(*s*) *Welcome v. Lake*, 1 *Sid.* p. 281; 2 *Kebl.* p. 22.

(*t*) *Gardner v. Parker*, 4 *T. R.* p. 351; but see *Starky v. Churchwardens of Watlington*, 2 *Salk.* p. 547.

(*u*) *Hilliard v. Jeffreson*, 1 *Ld. Raym.* p. 212.

CAP. II.
PRESCRIPTION.

Most prohibi-
tions granted
for excess of
jurisdiction.

not be subjected to a double prosecution (*x*). The ordinary cannot punish a single trespass in the church which does not hinder the service; which is included under the statute *Circumspectè agatis—de ecclesiâ discoopertâ*.

543. The largest class of cases, in which prohibitions have been granted by the Queen's Courts at Westminster, is, where a plain and manifest excess of jurisdiction has appeared to have been claimed or exercised by the Ecclesiastical Court (*y*).

Prohibition
granted for
defect of trial.

544. Temporal incidents are to be tried according to the rules of common law (*z*); and if they are handled differently, it is a *defect of trial*, for which a prohibition will be granted.

As in matters
properly
triable at
common law.

545. Where matters are properly and essentially triable at common law, and the party comes for a prohibition before sentence, the Court of Queen's Bench will grant it, *for the sake of trial*. But if the party submit to trial, he is afterwards too late (*a*).

If for sake of
trial, must be
before sen-
tence.

546. In case of prohibition to be granted for the sake of trial (as distinguished from those which are to be granted upon account of a wrong trial or erroneous judgment), the rule is established, that a party neglecting to contest the jurisdiction in the first instance, and taking his chance of a favourable decree, shall not be allowed, after sentence, to allege the want of jurisdiction as a ground of prohibition, unless the defect appear on the face of the pleadings.

Object of
King's Bench
in making such
rule.

547. The justice of this rule is very apparent—the propriety of the exception, scarcely less so; for it is the duty of the Court of King's Bench to restrain any encroachment

(*x*) *Binsted v. Collins*, *Bunb.* p. 229.

(*y*) *Veley v. Burder*, 12 *A. & E.* p. 311.

(*z*) *Shotter v. Friend*, 2 *Salk.* p. 547.

(*a*) *Full v. Hutchins*, 2 *Corp.* p. 424.

of jurisdiction on the part of the inferior courts; and, therefore, it interferes for the sake of the public, and not of the individual, where from the want of jurisdiction appearing on the face of the proceedings the case might become a precedent if allowed to stand without impeachment (*b*).

CAP. II.
PRESCRIPTION.

548. It may be conceded that in cases where it is shown that an inferior court is proceeding beyond its jurisdiction, a party is entitled to a writ of prohibition, not as a matter of discretion, but *ex debito justitiæ* (*c*).

If acting beyond jurisdiction, prohibition is *ex debito justitiæ*.

549. The Court of Chancery may award a prohibition, which may issue as well in vacation as in term time; but such writ is returnable into the Queen's Bench, or Common Pleas (*d*).

Chancery may grant prohibition.

550. On a motion for prohibition there must be an affidavit that the matter suggested to have been pleaded, was pleaded in the Spiritual Court (*e*).

Prohibition granted on affidavit.

551. A defendant cited in an Ecclesiastical Court must appear before he can apply for a prohibition (*f*).

Defendant cited in Ecclesiastical Court must appear.

552. No prohibition will be granted where there is neither plea nor allegation leading to an issue on any matter which the Spiritual Court is incompetent to determine (*g*).

Must be an allegation in Spiritual Court.

553. When it is pleaded, it ties up the hands of the ordinary from any further proceeding, because the Spiritual Court cannot try a prescription (*h*).

Which is then stopped.

(*b*) Bodenham & ors. v. Ricketts, 6 *Nev. & Man.* p. 176; 4 *Ad. & E.* p. 441; 1 *Har. & Wol.* p. 754.

(*c*) Ex parte Smyth, 2 *Crompt. M. & R.* p. 754.

(*d*) Bro. *Abr.* "Prohibition," part 6; 4 *Inst.* p. 81; 1 *Peere Wms.* p. 43.

(*e*) Burdett v. Newell, *Ld. Raym.* p. 1211.

(*f*) Ex parte Law, 2 *A. & E.* p. 45; Rex v. Mills, 4 *N. & M.* p. 7.

(*g*) E. of Beauchamp v. Turner, 10 *A. & E.* p. 221.

(*h*) Swetnam v. Archer, 8 *Mod.* p. 338.

CAP. II.
PRESCRIPTION.

Both parties must plead. Prohibition grantable as soon as prescription is denied.

Where Ecclesiastical Court has jurisdiction as to part of question.

No interference with suit about faculty to confirm alterations.

Galleries built under faculties to University, which claimed a subsequent addition.

554. But the parties must plead, for perhaps they may admit the plea (*i*).

555. But when once it appears by the proceedings in the Spiritual Court, that the prescription instead of being admitted is disputed, and that the parties are in progress to bring its existence to trial, the courts of common law are not bound to wait till the parties have incurred the expense of putting it in issue; and the prohibition is grantable at once (*k*).

556. The Court of Queen's Bench will presume that the Ecclesiastical Court will limit its decision to points which it may properly embrace, and will not prohibit the Ecclesiastical Court from proceeding to judgment, although the faculty *prayed* for is larger than the court has power to grant (*l*).

557. A court of common law has no power to prohibit the Ecclesiastical Court from granting a faculty to confirm alterations which have been already made; the suit, therefore, must proceed *quoad* them, in order that the Ecclesiastical Court, within whose proper jurisdiction that matter is, may determine whether the faculty be granted or not (*l*).

558. By a faculty granted A.D. 1738, by the Ecclesiastical Court of Ely, the Masters of Arts' Pit and the north and south galleries in the parish church of Great St. Mary, Cambridge, were appropriated to the University. In A.D. 1819, by agreement with the then churchwardens, the University, at their sole cost, enlarged the Masters of Arts' Pit and the galleries, and erected ten new pews, and for that purpose removed the organ into the tower,

(i) Anon., 2 *Salkeld*, p. 551.

(k) *Byerley v. Windus*, 5 *B. & C.* p. 22, and 7 *Dowl. & Ry.* p. 564.

(l) *Hallack v. Univ. of Cam.*, *Ad. & E., N. S.*, 1 *Q. B.* p. 614, and 1 *Gale & D.* p. 113; 9 *Degge*, p. 583.

and made other alterations. The University afterwards instituted, by letters of request, a suit in the Court of Arches against the churchwardens and parishioners, to confirm the erections and alterations, *and to appropriate the same to the University and their successors exclusively.* The official principal received the letters of request, and an act on petition, answer and reply were delivered (*m*).

CAP. II.
PRESCRIPTION.

559. To a declaration in prohibition, by the churchwardens, &c. disclosing these facts, the University demurred, and the Court of Queen's Bench gave the defendants in prohibition judgment, on the ground that, supposing the grant of a faculty for a pew to a corporation illegal, and that prohibition would lie for a faculty before it is granted (which seems doubtful), yet a faculty to confirm erections and alterations would be legal, and the Spiritual Court had done nothing illegal as yet, and it was to be presumed that it would limit the faculty to those objects, which legally might be embraced in it (*m*).

Queen's Bench presumes Ecclesiastical Court will not exceed its jurisdiction.

560. But where matters which are triable at common law arise incidentally in a cause, and the Ecclesiastical Court has jurisdiction in the principal point, prohibition to stay trial will not be granted (*n*). Still if any incidental matter intervenes by which the jurisdiction of the Ecclesiastical Court is ousted of its original jurisdiction, in that case a prohibition must go (*o*).

Will not necessarily interfere.

561. A faculty being prayed to confirm certain alterations in a church, and for permanently appropriating seats gained thereby, the Court of Queen's Bench held that it had no power to prohibit the grant of faculty for the former object, and that it was by no means a clear point

Perhaps granted *ex gratiâ* in a question of permanent appropriation.

(*m*) Hallack v. Univ. of Cambr., *Ad. J. E., N. S.*, 1 *Q. B.* p. 614, and 1 *Gale J. D.* p. 113; 9 *Degge*, p. 583.

(*n*) Full v. Hutchins, 2 *Comp.* p. 424.

(*o*) Darby v. Cosens, 1 *T. R.* p. 555.

CAP. II.
PRESCRIPTION.Resolution of
Star Chamber.

whether prohibition would lie in respect to the latter part of the application; if so, it would be only *ex gratiâ* (*r*).

562. It was resolved in the Star Chamber, that if a man have a house in any parish, and time out of mind, he and all those whose estate he has, have used to have a certain pew in the church; if the ordinary will displace him, he shall have a prohibition; but he must claim the seat as belonging to his house (*s*).

Prohibition to
suit on claim
by a non-
parishioner.

563. As a non-parishioner can have no right to a seat in the body of the church, except by prescription, prohibition will be granted against the Spiritual Court in a suit by an extra-parochial person for a pew in the body of the church, either if claimed by any other title than prescription, or if claimed by that title and denied by the other side (*t*). This is on the ground that an issue has been raised in the Ecclesiastical Court upon a question of fact, which can only be tried by a jury in the temporal court (*u*).

Whether pew
is appurtenant
to a house
must be tried
by jury.

564. When a right is annexed to a house in the parish, any obstruction to that right is a detriment to the occupation of the house; and it is only on account of a pew being annexed to a house that the temporal courts can take cognizance of any intrusion into it (*x*). Whether a pew is appurtenant to an ancient house is a question for the consideration of a jury (*y*).

Prohibition at
any time before
sentence.

565. It is not necessary for the party to apply in the first instance for a prohibition; if he make an application

(*r*) Hallack v. Univ. of Camb., *Ad. & E., N. S.*, 1 *Q. B.* p. 614; and 1 *Gale & D.* p. 113.

(*s*) Corven's case, 12 *Co. Rep.* p. 106, n.; Garven v. Pym, *Godb.* p. 200; 3 *Inst.* p. 202; citing Hussey v. Layton.

(*t*) Byerley v. Windus, 5 *B. & C.* 1; and 7 *Dowl. & Ry.* p. 564.

(*u*) Hallack v. Univ. of Camb., 1 *Gale & D.* p. 113.

(*x*) Mainwaring v. Giles, 5 *B. & A.* p. 362.

(*y*) Griffith v. Matthews, 5 *T. R.* p. 297.

any time before sentence, he is in time ; no other line can be drawn (*b*).

CAP. II.
PRESCRIPTION.

566. Where the Spiritual Court has no original jurisdiction, a prohibition may be granted *after* sentence (*c*).

Or after, if no original jurisdiction.

567. And a prohibition was granted after an appeal to the Arches, and then to the Delegates, and sentence affirmed there ; it appearing that a custom as to the ordering and disposing of the seats had come into question (*d*).

Even after appeal to Delegates.

568. After sentence prohibition shall not go, unless want of jurisdiction below appears upon the face of the proceedings (*e*).

But only if such defect be apparent on proceedings.

569. A prohibition does not lie after sentence, unless it appears by the sentence that the Ecclesiastical Court has pronounced on matters conusable at common law, although there are several articles contained in the libel, some of which are not conusable (*f*).

And not if part only, of articles pleaded, are conusable at common law.

570. The distinction in cases where prohibition does or does not lie after sentence is this:—If it appears on the face of the libel that the Ecclesiastical Court has no jurisdiction of the cause, a prohibition shall go ; because there *interest reipublicæ* that they should not encroach on the jurisdiction of the temporal courts, and in such case their sentence is a nullity (*g*).

Distinction of cases where prohibition after sentence is or is not granted.

571. After sentence it is incumbent on the party making

A doubt is a sufficient objection.

(*b*) *Darby v. Cosens*, 1 *T. R.* p. 555.

(*c*) *Leman v. Goulty*, 3 *T. R.* p. 4.

(*d*) *Brabin v. Trediman*, 2 *Rolle's R.* p. 24.

(*e*) *Buggin v. Bennett*, 4 *Bur. Rep.* p. 2035; *Symes v. Symes*, 2 *Bur.* p. 813 (A.D. 1759); *Sims v. Sims* (1759), 2 *Ld. Kenyon's Cases in K. B.* p. 540; *Blacquiere v. Hawkins*, 1 *Dougl.* p. 378; *Ladbroke v. Crickett*, 2 *T. R.* 649; *Gosling v. Veley*, 12 *Q. B.* p. 390; *Full v. Hutchins*, 2 *Corp.* p. 424.

(*f*) *Hart v. Marsh*, 1 *Nev. & P.* p. 62; *Ibid.* 5 *Ad. & E.* p. 591; *Ibid.* 5 *Dowl. P. C.* p. 424; *Ibid.* 2 *Har. & W.* p. 341.

(*g*) *Full v. Hutchins*, 2 *Corp.* p. 424.

- CAP. II.
PRESCRIPTION.
-
- On granting prohibition ecclesiastical costs cannot be given. the application, to show clearly that the Spiritual Court had no jurisdiction. If, therefore, it be doubtful, it is an answer to the application (*h*).
- No prohibition after consultation. 572. The Act of 1 Will. IV. c. 21, s. 1, does not enable the court, where a party has declared in prohibition and succeeded, to grant him his costs incurred in the Ecclesiastical Court (*i*).
- Attachment for disobedience of prohibition. 573. After a consultation, prohibition may not be granted; except in the case of the judge dying, when his successor may be prohibited (*k*).
- Even if prohibition be granted improvidently. 574. The disobeying of a prohibition is a contempt of the Superior Court that awards it, and is punishable by attachment, which issues against the judge and party, or either, for proceeding after such prohibition, and for which they are subject to fine and imprisonment, according to the discretion of the Superior Court (*l*).
- And even against a peer. 575. And even if a prohibition issue improvidently, but is not superseded, a proceeding in breach of it is a contempt (*m*).
- An attachment was dissolved upon payment of fine. 576. An attachment for a contempt may be awarded not only against a commoner, but even against a peer of the realm (*n*).
577. An attachment was granted upon affidavit, that the party had proceeded after a prohibition delivered to him, in a suit for a seat in a church, which the plaintiff claimed by prescription; and on his appearance and examination upon interrogatories, he confessed the matter and was fined five marks (*o*).

(*h*) *Carslake v. Mapledoram*, 2 *T. R.* p. 475.

(*i*) *Tessimond v. Yardley*, 5 *B. & Adol.* p. 458.

(*k*) *Bowry v. Wallington*, *Latch.* p. 7.

(*l*) *F. N. B.*, II. § *K.* p. 40.

(*m*) *Iveson v. Harris*, 7 *Ves.* p. 251.

(*n*) 21 *Edw. III.*, pt. 7, p. 2; *Bac. Abr.* "Prohibition."

(*o*) *Dr. Wainwright's case*, cited *Bacon's Abr.* "Prohibition" (M).

578. And not only an attachment lies for proceeding in the same cause pending a prohibition, but also for instituting a new suit for the same thing. Thus, if a parson libels for tithes, and a prohibition is brought, and he libels for tithes of another year, the first suit not being determined, an attachment shall be awarded (*p*).

CAP. II.
PRESCRIPTION.

Attachment also for instituting new suit for same thing.

579. As prohibition is intended for keeping every court within its proper jurisdiction, the law as to prohibition can only be altered by act of parliament (*q*).

The law can only be altered by act of parliament.

(*p*) Bacon's *Abr.* "Prohibition" (M).

(*q*) Comyn's *Dig.* "Prohibition" (C); 2 *Inst.* p. 601.

PART C.

PRIVATE CHAPELS AND UNCONSECRATED
BUILDINGS.

DIVISION a.

a. PRIVATE
CHAPELS.*PRIVATE CHAPELS.*

Ordinary has
no power over
seats in private
chapels.

580. It is said that the ordinary has no power over seats in chapels annexed to the houses of noblemen and other laymen (*a*).

“Private
Chapels Act,
1871.”

581. In “The Private Chapels Act, 1871” (*b*), there was, when the bill was introduced into the House of Commons, a paragraph which prohibited the letting of any seat for hire, or the charge of any fee for admission to the services in any chapel to which a clergyman was licensed by the bishop under the provisions of the act, and without the consent of the incumbent of the parish; but the paragraph dropped out before the bill became an act.

Private
chapels bear a
resemblance to
proprietary
chapels.

582. There is, it will be seen, a very remarkable dearth of legal information as to the seats in private chapels; perhaps they may be considered more in the nature of seats in proprietary chapels than in any other ecclesiastical building.

(*a*) 2 Roll's *Abr.* p. 288, citing Wyche's case; Viner's *Abr.* “Prohibition” (G).

(*b*) “The Private Chapels Act, 1871” (34 & 35 Vict. c. 66).

PART C.

PRIVATE CHAPELS AND UNCONSECRATED
BUILDINGS.DIVISION **b.***PROPRIETARY CHAPELS.***b. PRO-
PRIETARY
CHAPELS.**

583. PROPRIETARY chapels are anomalous, being unknown to the constitution of the Church of England, and to the ecclesiastical establishment; and can possess no parochial rights, and the exercise of any such rights would be a mere usurpation (*a*). Proprietary chapels are anomalous, and have no parochial rights.

584. They are mere speculations of the proprietors, probably for a very good purpose, and from very honorable motives, and not merely for the sake of the emoluments arising from letting the pews (*b*); for which, in return, the performance of public service is afforded (*c*). They are mere speculations.

585. If the proprietors, from any cause, cannot let these pews, there is nothing to prevent them, even if the chapel be consecrated, from shutting it up; and, if not consecrated, from converting it to any secular purpose (*d*). If unproductive may be shut up.

586. But it was the opinion of the late Dr. Swabey (answering a case for opinion in 1820) that, strictly, the consent of the ordinary might be necessary to the owners erecting more pews therein; but when erected, the owner (and not the parish) may place persons therein, though still subject to the control of the ordinary, if lawful cause for interference and control should arise. (It is not easy to imagine how such cause could arise) (*e*). But doubt whether ordinary's authority necessary for putting up seats.

(*a*) *Moysey v. Hillcoat*, 2 *Hagg.* p. 46.

(*b*) *Ibid.* p. 50.

(*c*) *Ibid.* p. 57.

(*d*) *Ibid.* p. 50.

(*e*) MS. Opinion.

PART D.

CHURCHES BUILT UNDER ACTS OF PARLIAMENT.

DIVISION a.

a. GENERAL
ACTS.*GENERAL CHURCH BUILDING ACTS.*

Introduction.

587. THE Church of England, after a very lengthened period of somnolent existence, scarcely to be called life, suddenly awoke to discover an appalling amount of spiritual destitution. The first step taken towards a remedy for this state of things was the passing in 1818 of an act for building and promoting the building of additional churches in populous parishes (*a*), followed up by the appointment of church-building commissioners (*b*), to carry the act into operation. The original act has been patched and tinkered a dozen times subsequently by as many other church building acts, and various other quite independent acts have also been passed; the result is a very confused and unsatisfactory mass of material, needing much more than codification. The commission, at first limited to ten years, was continued by subsequent acts up to the end of the year 1857, when its powers, &c. were transferred to the ecclesiastical commissioners (*c*).

588. For the purposes of the Act of 1818, parliament

(*a*) 58 Geo. III. c. 45.

(*b*) By 58 Geo. III. c. 54.

(*c*) 19 & 20 Vict. c. 55.

voted the sum of a million sterling (*d*), and half a million more was added by the Act of 1824 (*e*). a. GENERAL ACTS.

589. In a subject so novel to public attention, it would be no matter of surprise to find that principles concreted in ages long past, and subsequently in ignorance of their true character, despised as dark and barbaric, were altogether unnoticed, or if noticed, disregarded. It might, perhaps, be expected that provision would be made that nothing in the acts, or to be done under their authority by the commissioners, should invalidate or avoid any ecclesiastical law or constitution of the Church of England, or destroy any of the rights or powers belonging to any bishop, archdeacon, chancellor, or official, or hinder the exercise of their ecclesiastical jurisdiction as fully, and in like manner, as theretofore (*f*).

General churchbuilding a novel subject.
Rights of bishops were preserved.

590. But it is a matter of some astonishment to find that in 1818 (the date of the first of the Church Building Acts) the ancient rights of parishioners to the use of their parish church, without payment of rent, were fully recognized; and although to relieve the pressing wants of the moment, a system of appropriation and pew renting was sanctioned, the act contemplated it merely as a temporary measure, and made provision for its diminution and extinction (*g*). A little more consideration of human nature would no doubt have shown that, as a rule, persons who had acquired special privileges were not likely to abandon them voluntarily, or themselves take the necessary steps to restore, at their own loss, the rights of the parishioners at large; and the result has been that in a large number of

Ancient principle of freedom from rent maintained.

(*d*) 58 Geo. III. c. 45, s. 1.

(*e*) 5 Geo. IV. c. 103, s. 1.

(*f*) 58 Geo. III. c. 45, s. 84; 3 Geo. IV. c. 72, s. 36.

(*g*) 59 Geo. III. c. 134, s. 26.

a. GENERAL ACTS.

cases rents, sometimes little more than nominal, have been continued when they ought, in accordance with the spirit and intention of the act, long since to have ceased. Rights or liberties waived or infringed are not easily regained.

Letting seats intended as temporary measure.

591. Although the plan of letting seats at a rent, as a means of supplying the deficiency of funds, was adopted by the earlier Acts as a temporary measure, the right to seats without payment was still further recognized by the Act of 1831 (*f*), which contemplates the building of new churches in which there might be no pew rents, though it still sanctioned them in anticipation of their being frequently necessary.

Limited to a part.

592. The permission to let seats is limited to a certain proportion of the whole accommodation of a church built under the provisions of the Church Building Acts, a proportion which varies under different acts, and various claims have first to be considered.

Plan of this part.

593. We commence with a list of the Church Building Acts and those Public General Acts which affect pews: next show what rights are reserved; and then what are the requirements as to free seats. Next as to the letting, and the appropriation of the rents, and under what circumstances they cease. And conclude with the rights of the seat-holders and their cessation.

594. Division **b** refers only to churches and chapels built under local and private Acts, each independent of the others and of the general law. Consequently every case is governed by its own Act, and few points decided affect them at large.

(*f*) 1 & 2 Will. IV. c. 38, s. 2.

595. *List of General Church Building Acts.*a. GENERAL
ACTS.List of Church
Building Acts.

1818 . .	58 George III. . . .	c. 45.
1819 . .	59 George III. . . .	c. 134.
1822 . .	3 George IV. . . .	c. 72.
1824 . .	5 George IV. . . .	c. 103.
1827 . .	7 & 8 George IV. . . .	c. 72.
1831 . .	1 & 2 William IV.. . .	c. 38.
1832 . .	2 & 3 William IV.. . .	c. 61.
1838 . .	1 & 2 Victoria . . .	c. 107.
1839 . .	2 & 3 Victoria . . .	c. 49.
1840 . .	3 & 4 Victoria . . .	c. 60.
1843 . .	6 & 7 Victoria . . .	c. 37.
1844 . .	7 & 8 Victoria . . .	c. 56.
1844 . .	7 & 8 Victoria . . .	c. 94.
1845 . .	8 & 9 Victoria . . .	c. 70.
1846 . .	9 & 10 Victoria . . .	c. 68.
1846 . .	9 & 10 Victoria . . .	c. 88.
1848 . .	11 & 12 Victoria . . .	c. 37.
1851 . .	14 & 15 Victoria . . .	c. 97.
1855 . .	18 & 19 Victoria . . .	c. 127.
1856 . .	19 & 20 Victoria . . .	c. 104.
1860 . .	23 & 24 Victoria . . .	c. 142.
1869 . .	32 & 33 Victoria . . .	c. 94.

596. Nothing in the acts or done under their authority by the commissioners is to invalidate or avoid any ecclesiastical law or constitution of the Church of England, or to destroy any of the rights or powers belonging to any bishop, archdeacon, chancellor or official; but they may at all times exercise ecclesiastical jurisdiction as fully and in like manner as theretofore (*g*).

597. Before the consecration of any church or chapel under the original Church Building Act, a pew sufficient

General rights
of bishops re-
served by the
acts.Seats for
minister and
family.

a. GENERAL
ACTS.

to hold at least six persons is to be set apart in the body or ground floor near the pulpit, for the use of the minister and his family. Also other seats, to contain at least four persons, are to be set apart in some other convenient situation, and not among the free seats, for the use of the minister's servants; and no rent is to be paid for any of these sittings (*h*). There is here an evident reminiscence of the ancient right of the parson to the chief seat.

Pews for
church-
wardens.

598. Proper pews are to be assigned and provided in every church and chapel, for the use of the church or chapelwardens (*i*).

Rights trans-
ferred from
former to sub-
stituted church.

599. When a chapel is converted into a parish church, and the former church becomes a chapel (the endowments being transferred), the rights of persons holding pews rent free by faculty or prescription in the former parish church are not lost but transferred (*j*).

Commission to
consider rights
transferred to
substituted
church.

600. Upon the substitution of a new church for an old one in the same parish and the transfer thereupon of parochial rights, the bishop at any time within six months of such substitution may, on his own mere motion, and, if required by any person claiming to hold a pew or seat free of rent, by faculty or prescription, in the old or existing church, is required to issue a commission, under his hand and seal, to two incumbents of parishes within the arch-deaconry containing the old church and two laymen nominated for this purpose by the churchwardens of the old church and not claiming to hold any such pews or seats (*k*).

What bishop
has jurisdic-
tion in
chapelry.

601. As regards a chapelry (now a parish) formed out of parts of contiguous parishes, even though previously wholly or in part within any exempt or peculiar jurisdic-

(*h*) 58 Geo. III. c. 45, s. 75.

(*i*) 59 Geo. III. c. 134, s. 30.

(*j*) 1 & 2 Vict. c. 107, s. 18.

(*k*) 8 & 9 Vict. c. 70, s. 1.

tion, the chapel becomes subject to the jurisdiction of the bishop and archdeacon in whose diocese and archdeaconry the altar of the chapel of the chapelry is locally situate (*l*).

a. GENERAL ACTS.

602. A commission was issued by the chancellor of a diocese, subsequent to certain alterations and additions to a parish church, to inspect the sittings and settle all claims of the inhabitants in a just and equitable manner, having regard to any existing right to sittings there, whether possessory or by faculty or prescription, and with the distinct understanding that no person who had ceased to be an inhabitant and occupier of premises in the parish should retain possession; and to certify the court by a given day in order that the court might judge of and (as justice should direct) ratify and confirm the same and decree the disposition and allotment of the seats accordingly. Such a commission is not illegal, though, perhaps, the terms in which the power was conferred were somewhat large. As the chancellor retained the final adjudication upon the award, in his own hands, the commission was properly issued (*m*).

Form of commission granted in respect to re-fitted church.

603. In this case, however, no question was raised as to the authority of the bishop to cite persons claiming seats to prove their title either before himself or a commission. The Act of 1844 (*n*), authorizing the issue of an analogous commission, refers only to the case of the substitution of a new church for an old church, and not at all to possessory rights. The absolute appearance of claimants would act as a submission to the jurisdiction.

But act refers only to substituted church.

604. The commissioners appointed under the Act of 1844, or any three or more of them, of whom the archdeacon must be one, are at their earliest convenience to examine into such claims, having previously given fourteen

Commissioners to examine into claims.

(*l*) 59 Geo. III. c. 134, s. 7; 2 & 3 Will. IV. c. 61.

(*m*) *Craig v. Watson*, Arches Ct. (Sir R. J. Phillimore), 30 Nov. 1870, unrep.

(*n*) 8 & 9 Vict. c. 70, s. 1.

a. GENERAL ACTS.

days' notice, by affixing a copy of their commission on the door of the new church, together with a notice signed by the archdeacon, specifying the day, time and place on which such examination is to be made (*o*).

And bishop may assign equivalent seats in new substituted church.

605. After making an examination into these claims, the commissioners, or the majority of them, are, under their hands, to transmit in writing to the bishop, the names and residences of those persons who have substantiated claims to such pews or seats; and the bishop, if satisfied, is to assign, under his hand and seal, to such persons respectively, convenient pews or seats in the new church, to be held and enjoyed in the same manner as those to which they had been entitled in the old church (*o*).

Persons aggrieved by commissioners may appeal to bishop.

606. Any person aggrieved by the finding of such commissioners may appeal to the bishop of the diocese, who may, if he think fit, allot him seats in the new church (*o*). This the bishop might have done, under the ordinary theory of a bishop's authority, without special parliamentary powers.

Under circumstances fresh evidence permitted on appeal to Arches.

607. Upon appeal from the chancellor of a diocese who had confirmed the settlement, made under a commission by him appointed for the purpose, of all claims of the parishioners to sittings in a parish church, the Arches Court, upon the representation that one of the objectors had in the court below acted without legal advice, and that his rights had been imperfectly set forth, allowed fresh evidence to be taken (*p*).

Rights to be specified in scheme for division.

608. Upon the division of a parish under the New Parishes Act of 1856, the rights of pewholders are to be specified in the scheme ratified by order in council (*q*).

(*o*) 8 & 9 Vict. c. 70, s. 1.

(*p*) *Craig v. Watson*, unrep.

(*q*) 19 & 20 Vict. c. 104, s. 25.

609. The original Church Building Act (1818) provides that one-fifth part of the whole of the sittings in any church or chapel, built wholly or in part out of or on money raised on the credit of rates, shall be free from rent or assessment. They are to be marked with the words "Free Seats" (*r*).
610. The Act of 1819 directs that one-half of the additional accommodation gained by rebuilding a church under that act shall be free and open (*s*).
611. In order to secure the patronage conferred by the Act of 1831 upon persons building or endowing, it is required that one-third of the whole should be free (*t*); by a subsequent section (*u*) the commissioners may direct any church or chapel built by private individuals, under the provisions of the Church Building Acts, shall be subject to the provisions of this act.
612. By the Act of 1838 it is left to the bishop to determine whether the one-third part of the sittings required in the former act to be free, should thereafter be free, or whether the same, or any part thereof, should be let at such low rents as the bishop should from time to time direct (*x*).
613. Where a new or substituted church has been built wholly or in part out of funds granted by the commissioners, and a transfer has been made, the rents shall only be fixed by the commissioners for the number of seats exceeding the number in the old or existing church (*y*).
614. Where in a new parish or district it appears to the commissioners that sufficient funds cannot be obtained

a. GENERAL ACTS.

Proportion of free seats. Originally one-fifth in church built out of rates.

Half seats gained by rebuilding to be free.

One-third of whole must be free to secure patronage.

Bishop may direct them to be let at low rents.

But rents only on seats in excess of former number.

Originally one-third of church of united parishes.

(*r*) 58 Geo. III. c. 45, s. 75.

(*s*) 59 Geo. III. c. 134, s. 40.

(*t*) 1 & 2 Will. IV. c. 38, s. 2.

(*u*) Ibid. s. 22.

(*x*) 1 & 2 Vict. c. 107, s. 1.

(*y*) 8 & 9 Vict. c. 70, s. 1.

**a. GENERAL
ACTS.**

One-half of
church of new
parish.

from other sources and they order that rents be fixed, at least one-half of the whole number of sittings in the church shall be free; and it must be shown to their satisfaction that such free sittings are, with respect to position and convenience, as advantageously situated as the others (*a*).

615. In the case of the church of contiguous parishes, united under an act passed in 1855 (but limited to a period of five years), not less than one-third of the seats are to be free and unappropriated (*b*).

Now one-half.

616. On the expiration of this act in 1860, another and permanent act was passed, which provides that at least half of the seats in the church of the united parishes shall be unappropriated (*c*).

One-fourth at
extra service.

617. In the case of a third or additional service being appointed by the bishop under power conferred by the Act of 1818, at least one-fourth of the seats must be kept free (*d*).

None let under
Acts of 1843
and 1844, till
altered in 1856.

618. The New Parishes Act (1843) (*e*), and its Amendment Act (1844) (*f*), which require a certain endowment, contain no provision for letting seats; but the power of fixing rents (where it shall appear that sufficient funds cannot be provided from other sources, but not otherwise), is imported into them by the Act of 1856 (*g*) in respect to churches to which a district is assigned after the date of the last-mentioned act, on the 29th July, 1856.

Then one-half
of whole, and
equal in all
respects to
others.

619. Where rents are ordered by the commissioners to be adopted in a church built under the Acts of 1843 and 1844, one-half at least of the whole number of sittings in the church shall remain free; and it must be shown to the

(*a*) 19 & 20 Vict. c. 104, s. 6.

(*b*) 18 & 19 Vict. c. 127, s. 13.

(*c*) 23 & 24 Vict. c. 142, s. 28.

(*d*) 58 Geo. III. c. 45, s. 65.

(*e*) 6 & 7 Vict. c. 37 (commonly called "Peel's Act").

(*f*) 7 & 8 Vict. c. 94.

(*g*) 19 & 20 Vict. c. 104, s. 6 (commonly called "Blandford's Act").

satisfaction of the commissioners that such free seats are well placed and convenient as those for which it is proposed to fix rents (*h*).

a. GENERAL
ACTS.

620. The other seats (not exceeding the proportions mentioned) are to be let by the churchwardens, and it is their duty to collect the rents for such seats (*i*).

Wardens to
collect rents.

621. Where under the authority of the provisions of the act the bishop has required that a third service in the day be performed by a clergyman specially appointed for the purpose, he may require the churchwardens to let for such third service, such proportions of the pews (not being pews held by faculty or prescription) and at such rates as, in the bishop's opinion, may be sufficient to afford a competent salary to such clergyman; but reserving such number of free sittings, being at least one-fourth, as may seem expedient to the bishop (*h*).

Where bishop
orders a third
service, seats to
be let inde-
pendently of
general allot-
ment.

622. In churches built under the original Church Building Act, the commissioners are to fix the rents of the pews (*l*).

Rents fixed by
commissioners.

623. Under the Act of 1819 all pew rents are payable in advance. One year's rent is to be paid on admission to the pew or seat, if given at Lady Day or Michaelmas; but if at an intermediate period, then a proper proportion, in addition to a half-year's rent, and afterwards a half-year's payment in advance. But such pew or seat is to be forfeited by the discontinuance of such payment in advance for two successive half-years (*m*).

All rents pay-
able in ad-
vance.

624. They are to be offered in the first instance to parishioners. All subscribers, who are parishioners, to

Sittings offered
to parishioners
according to

(*h*) 19 & 20 Vict. c. 104, s. 6.

(*i*) 58 Geo. III. c. 45, s. 73.

(*h*) Ibid. s. 65.

(*l*) Ibid. s. 63.

(*m*) 59 Geo. III. c. 134, s. 32.

a. GENERAL
ACTS.

amount or
order of sub-
scription.

Subscribers to
building a
church may be
discharged
from rents for
time of life,
with power of
assignment.

Notice of
vacancies to be
given.

Those unlet
after fourteen
days, let to non-
parishioners.

any church or chapel built under 58 Geo. III. c. 45, have choice of pews, at the rates fixed by the commissioners, in the *order* of their *amount* of subscriptions; and in case of subscribers to the same amount, then in the *order* of their subscriptions (*n*).

625. The church-building commissioners may discharge any subscribers towards building any church or chapel, or towards purchasing their sites, wholly or in part from the payment of pew rents for a limited time, or for life, in such proportion to the amount of their respective subscriptions as the commissioners shall see fit, and allow such subscriber, if he remove from the parish, to assign the remainder of such term to any other parishioner inhabiting the parish (*o*). Doubts which had been entertained as to whether the power applied to subscribers to sites as well as subscribers to building, were set at rest by the Act of 1831 (*p*).

626. Where the pew rents have been fixed, notice is to be given for six successive weeks, at the end of each year, of all the pews which will be vacant at the commencement of the year following, and the same is to be affixed in writing upon the doors of the church or chapel and vestry room respectively (*q*).

627. All pews which are not taken at the rent fixed upon may, within fourteen days after the commencement of the ensuing year, be let to any inhabitants of adjoining parishes, where the church accommodation is insufficient, at the same rent, and for any term not exceeding a year. But at the end of every successive year each pew so rented is to be inserted in the list of vacant pews, and the inhabit-

(*n*) 58 Geo. III. c. 45, s. 76.

(*o*) 59 Geo. III. c. 134, s. 33.

(*p*) 1 & 2 Will. IV. c. 38, s. 21.

(*q*) 3 Geo. IV. c. 72, s. 24.

ants of the parish, to which the church belongs, are again to have the preference (*r*).

a. GENERAL
ACTS.

628. But the churchwardens *may*, with consent in writing of the incumbent, the patron and the bishop, alter such yearly rents; and in such case a new schedule of rents, and of the pews or seats upon which they are charged, must be signed by the churchwardens, incumbent, patron, and bishop, and be deposited with the deed of consecration (*s*). They may, however, be *required* to make such alterations by the bishop, with consent of the incumbent and patron, and in case the pew rents shall have been assigned to the parish, then with consent of the vestry (*t*).

Wardens may
alter rents
with consent or
at requirement
of bishop.

629. In the case of churches or chapels built under the Act of 1831, the seats are to be let by the church or chapelwardens, or by some person appointed by the trustees, or the persons building or endowing the church or chapel, at a scale approved by the bishop, which may be altered from time to time as occasion may require (*u*).

Wardens or
trustees may
let under Act of
1831.

630. Where the church of a consolidated chapelry has been built, wholly or in part, by means of funds supplied by the church-building commissioners, they, with consent of the bishop, may apply to such church the provisions of the Acts of 1818 and 1819, touching the reservation of pew rents (*x*).

Provisions of
1845 applicable
to consolidated
chapelry under
1818 and 1819.

631. In all cases not previously provided for, churchwardens, who are to be appointed in every district or consolidated chapelry, are to receive pew rents and recover arrears of such rents (*y*).

Otherwise the
wardens to
receive rents.

(*r*) 3 Geo. IV. c. 72, s. 24; 1 & 2 Will. IV. c. 38, s. 4.

(*s*) 58 Geo. III. c. 45, s. 78.

(*t*) 58 Geo. III. c. 45, s. 78; 59 Geo. III. c. 134, s. 31.

(*u*) 1 & 2 Will. IV. c. 38, s. 4.

(*x*) 8 & 9 Vict. c. 70, s. 11.

(*y*) Ibid. s. 6.

a. GENERAL
ACTS.

Or bringing an
action.

Means to en-
force payment
of rent in
arrear by let-
ting or selling.

To be let or
sold to
parishioners
only, and in
default to
others by
private con-
tract.

Except for
arrears, and
then with op-
tion of auction.

632. The churchwardens may, at their discretion, sue for and recover the rent in arrear by an action of *debt* or an *action on the case*, for the use and occupation of such pew or seat, to be brought against the owner or occupier in the name of "the churchwardens of the church or chapel of [*describing the church or chapel*];" and no such action abates by reason of the death, removal, or going out of office of any churchwardens (*a*).

633. Where the rent of any pew or seat is unpaid for the space of three months next after it is due, and notice in writing, demanding payment, has been given to the owner or occupier, then the churchwardens may either enter upon and hold such pew or seat, or let it to any other person, as they think proper, until the rent in arrear and all costs and charges have been satisfied. They have also the option of selling such pews or seats by public auction to the best bidder, and paying the rent in arrear out of the price; and after deducting all reasonable expenses, they are to pay any overplus to the respective owners or occupiers of such pews or seats (*a*).

634. The churchwardens are neither to let nor sell any pews and seats, except to parishioners, during the time they shall continue to inhabit the parish; and any sale of any pew or seat (in default of its being applied for by a parishioner, or otherwise in default of payment of rent) is subject to the reserved rent fixed under the provisions of 1818 and 1819, and is to be sold by private contract, and not by public auction (*b*). But with an exception in the case of rent being in arrear (under the Act of 1818), when the churchwardens have also the option of selling such pews or seats as mentioned in paragraph 633.

(*a*) 58 Geo. III. c. 45, s. 79.

(*b*) 59 Geo. III. c. 134, s. 32.

635. If persons are willing, in preference to pew rents, to subscribe for the salary of a curate for a third service, every subscriber, being a parishioner, shall have the option of any pew (not held by faculty or prescription) for such service, according to the amount, and in the order of subscription, if any have subscribed an equal amount; and to continue to hold such pew so long as he continues to subscribe (*c*).

a. GENERAL
ACTS.

Preference to subscribers to third service, according to amount and order.

636. The churchwardens may, with consent of the commissioners, borrow money towards building a church or chapel, or purchasing a site for it, and defraying expenses, upon the credit of the pew rents, subject to the payment of the clergyman and clerk's stipends and other expenses (*d*).

Money for building may be borrowed on credit of pews.

637. The commissioners, with consent of the bishop, are to assign out of the pew rents a proper stipend to the clergyman of such church or chapel, regard being had to the extent and population of the district attached to it, the cost of procuring a residence, and all other circumstances. They are also to assign a salary to the clerk of such church or chapel. If the commissioners and bishop cannot agree as to the amount of any such stipend, it is to be settled by the archbishop of the province (*e*).

Rents to be applied to stipend of clergyman and salary of clerk.

638. The commissioners may from time to time direct that the rents of the pews in any church or chapel within the provisions of the Church Building Acts, be assigned to the parish or district and received by the churchwardens, who thereupon are required to pay the clergyman and clerk their stipends (*f*).

Rents may be assigned to wardens for the purpose.

(*c*) 58 Geo. III. c. 45, s. 66.

(*d*) 59 Geo. III. c. 134, s. 27.

(*e*) 58 Geo. III. c. 45, ss. 63 & 64; 8 & 9 Vict. c. 70, s. 11.

(*f*) 59 Geo. III. c. 134, s. 26; and by 19 & 20 Vict. c. 104, s. 6, where the funds from other sources are insufficient.

a. GENERAL ACTS.

Wardens only liable for net amount realized.

Rents for like purpose in church built by individuals.

On substitution, rents to pay stipends for both churches.

Wardens liable only for amount of rents received by themselves.

Surplus rents (after payment of stipends) to go to repay loan, for repairs and in aid of church rate.

639. But the parish is in no case to be answerable to the minister or clerk for any greater sum than the pew rents of that year realize (*h*).

640. Where a church is built by private individuals, under the Act of 1824, the usual proportion of free seats is to be set apart; and a competent salary for the spiritual person who may officiate therein, as well as other expenses incident to the performance of divine service, and for maintaining such church, are to be provided out of the pew rents after consecration (*i*).

641. The commissioners may provide for the maintenance of the minister and clerk of both a substituted church and the church for which it was substituted, out of pew rents of either of such churches (*k*).

642. When, under the Acts of 1818 and 1819, the commissioners have made an order assigning rents to be received for the purpose of those acts, the minister is entitled to receive from the churchwardens (as soon as received by them), towards his stipend, what they have received (subject to some prior charges) for pew rents; but only in respect of quarters expired, and for which the stipend has become due. He is not entitled to receive from the present churchwardens the balance of rents received by the late churchwardens and not paid over to them (*l*).

643. The surplus of pew rents, after payment of stipend to the clergyman and clerk and other expenses, may, with consent of the commissioners, be applied towards the repayment of money advanced towards building the church or

(*h*) 59 Geo. III. c. 134, s. 26; and by 19 & 20 Vict. c. 104, s. 6, where the funds from other sources are insufficient.

(*i*) 5 Geo. IV. c. 103, s. 10.

(*k*) 1 & 2 Vict. c. 107, s. 18.

(*l*) *Lloyd v. Burrap & anor.*, 19 *Law Times Rep.*, *Ex.* p. 696.

chapel, purchasing its site, keeping it in repair, or other expenses. The residue of such pew rents are to be applied as above mentioned, or in aid of the church rate, if the commissioners think fit (*m*).

a. GENERAL
ACTS.

644. Any surplus of pew rents, after payment of such stipend and other expenses, is, except in certain cases (mentioned in the next section), to be invested in government securities, in the names of trustees to be appointed by the bishop of the diocese, to accumulate and form a fund for building or purchasing a house of residence for the clergyman; and after such purpose has been completed, then it is to be devoted either to the augmentation of the clergyman's stipend, the reduction of pew rents, or the increase of accommodation in the church, as the bishop may direct (*n*).

Unemployed surplus to be invested for fund for parsonage; then to augment stipend, reduce rents or increase accommodation.

645. The next section provides that the surplus rents after payment of the stipend and expenses may, if the commissioners think it expedient, be charged with the repayment of any loan for the cost of the church or site, and for defraying all expenses relative thereto, and for keeping the church in repair; and the then remaining residue be applied as before provided, or in aid of the church rate (*o*).

Or towards repayment of loan or for expenses, repairs or church rate.

646. The principle of a gradual cessation of rents had become lost sight of when the Act of 1831 passed. It empowers the payment over of the residue after an annual reservation for repairs, and payment of clerk's salary, beadles, pew-openers, and incidental expenses, to the minister for his own use by way of stipend in addition to the dividends of funded endowment (*p*).

Not to reduction of rents, but to augment stipend, by Act of 1831.

(*m*) 59 Geo. III. c. 134, ss. 26, 27.

(*n*) Ibid. s. 26.

(*o*) Ibid. s. 27.

(*p*) 1 & 2 Will. IV. c. 38, s. 16.

a. GENERAL ACTS.

Minister's stipend may be augmented, unless invested for parsonage or subject to a loan.

In new parishes to be applied to repairs and expenses, minister and endowment.

Repairs of pews part of repair of church.

And chargeable to their own districts.

647. The commissioners, with the consent, under seal, of the bishop, are empowered to augment, out of the surplus pew rents, the minister's stipend (in respect to which reservation out of pew rents has been made under the Act of 1818), by a further assignment of part or the whole of the surplus pew rents, accrued or to accrue; such assignment to be registered in the diocesan registry. But this power is not to be exercised where the surplus rents have been invested on government securities in trustees' names, to accumulate for cost of a house of residence; or where charged by the commissioners with repayment of loan and interest for the building of the church or chapel, or cost of site, expenses or repairs (*g*).

648. When in default of sufficient funds from other sources the commissioners make an order for pew rents in a church built under the Acts of 1843 and 1844, the proceeds not otherwise appropriated by law, are to be applied towards the repair and maintenance of the church, and the maintenance of the minister and the services, and the endowment of the church, in such manner as shall be specified in their order, and to no other uses (*r*).

649. The expense of repair of pews is necessarily included in the expense of repair of the church; and for this the pew rents are liable under the Act of 1819 (*s*), and various subsequent acts.

650. The repairs of all district churches or chapels, built under the Church Building Acts, when not otherwise provided for, are to be made by the districts to which they respectively belong, in like manner as in case of repairs of churches by parishes; and every such district is to be

(*g*) 3 & 4 Vict. c. 60, s. 5.

(*r*) 19 & 20 Vict. c. 104, s. 6.

(*s*) 59 Geo. III. c. 134, s. 27.

deemed in law a separate and distinct parish for that purpose (*t*). a. GENERAL ACTS.

651. Every such district is further to remain, for twenty years after consecration, subject to the repair and the incidental expenses (*u*) of the original parish church, and to be deemed during that time, and no longer, a part of the parish for the purpose of such repairs and rates for the purpose (*x*).

Districts also liable for twenty years to repair of original parish church.

652. In any case where any division of a parish divided under the provisions of the Acts of 1818, 1819 and 1822, shall be again divided, and a church or chapel built or appropriated within, and to the use of, such new division, the Church Building Commissioners, by any instrument under their seal, may declare that all liability to any repairs of the church or chapel of the division, from which such new division shall have been so made, shall cease from the period specified in such instrument: and that the only remaining liability be for its own repairs, and its share of the repair of the church of the original parish for the residue of the twenty years during which the old division was liable to share in such repair (*y*).

In case of further sub-division, liability for repair by last of intermediate parish church may be limited.

653. All chapels acquired and appropriated, or built, or enlarged, or improved, under the provisions of the Acts of 1818, 1819 and 1822, or under any local acts in which no provision has been made for such purpose, in aid of the churches of the parishes or places in which they may be situated (whether any district of any such parishes may have been assigned or not to such chapels as belong thereto for ecclesiastical purposes), are to be repaired by the

Chapels in aid to be repaired by the parish.

(*t*) 58 Geo. III. c. 45, s. 70.

(*u*) *Chesterton & H. v. Farlar*, 1 *Curt.* 356.

(*x*) 58 Geo. III. c. 45, s. 71.

(*y*) 3 Geo. IV. c. 72, s. 21.

a. GENERAL
ACTS.

Money for
purpose
directed to be
raised by
church rate,
but compul-
sory rates since
abolished.

respective parishes, places at large, or districts to which such chapels may belong (*z*).

654. The act provided that rates were to be raised, levied and collected for that purpose, in like manner in every respect as for the repair of the churches of such parishes and places, and all the laws then in force for making, levying and collecting rates for the repair of churches were to be applied and put in force for the raising, making, levying and collecting such rates for the repairs of such chapels (*z*). But this provision was from and after the 31st July, 1868, practically abrogated by the Act for the Abolition of Compulsory Church Rates for Ecclesiastical Purposes (*a*).

Individuals
building and
endowing must
provide fund
for repairs.

655. When a church or chapel is about to be built and endowed by private individuals, under the provisions of the Acts of 1831 and 1838, they must, as a preliminary step, declare their intention of providing a fund for its repair, namely, one sum, equal in amount to 5 per cent. of the original cost of such church or chapel, to be secured on lands or money in the funds, and also 5 per cent. upon the sum so raised, to be reserved annually out of the pew rents (*b*).

Or a perpetual
rent-charge.

656. A perpetual rent-charge, equal in value to the repair fund so directed to be secured, may be made upon lands or other hereditaments. And the incumbent of such church or chapel, immediately after it has been consecrated and a district assigned to it, may take to himself and his successors a transfer of such rent-charge, upon the same trusts and for the same purposes as the repair fund may be held by trustees (*c*).

(*z*) 3 Geo. IV. c. 72, s. 20.

(*a*) 31 & 32 Vict. c. 109.

(*b*) 1 & 2 Will. IV. c. 38, s. 2; and 1 & 2 Vict. c. 107.

(*c*) 3 & 4 Vict. c. 60, s. 15.

657. The Church Rate Abolition Act contains a provision that in cases where money had been borrowed on the security of church rates and was still owing, the making and enforcing payment of church rates for the purpose of repayment should temporarily continue (*d*). But in all other cases compulsory rates ceased from the date of the passing of the act (31 July, 1868), and the burthen of repairs was left to rest solely on the pew rents and endowment fund. The act consequently operates to an extension of the time during which pew rents may be levied.

a. GENERAL ACTS.

Since abolition of church rates, pew rents must bear repairs.

658. The trustees or wardens may sell vaults for burial under the church or chapel, or in the adjoining ground, and invest the proceeds as a fund to supply deficiencies, if the amount produced by the rents be insufficient (*e*).

Vaults sold in aid of funds.

659. When a permanent provision in land or money, in lieu of pew rents, to the satisfaction of the commissioners and bishop, is secured, and the pew rents have not been assigned or appropriated under any local act, the commissioners may, with consent of the bishop, by an instrument under their and his seals respectively, order that such rents shall thereupon cease, either wholly or in part (save as regards arrears); and the seats so exempted from rent shall be at the disposal of the churchwardens in like manner as the seats in an ancient parish church (*f*).

On sufficient permanent endowment, rents to cease.

660. In the case of churches built under the Acts of 1843 and 1844, to which the power of charging rents was extended by the Act of 1856, a similar provision is made, that upon a permanent endowment being provided, the commissioners may, with consent of the bishop, by an instrument under their seal, make an equivalent reduction in the total amount of the pew rents, either by a general

In new parishes either rents reduced or part entirely freed.

(*d*) 31 & 32 Vict. c. 109.

(*e*) 5 Geo. IV. c. 103, s. 15.

(*f*) 14 & 15 Vict. c. 97, s. 1.

- a. GENERAL ACTS.** reduction of rate, or by freeing certain specific pews: provided that no loan obtained on the security of the rents remains unpaid (*h*).
- But instrument may be rescinded. 661. With like consent the commissioners may rescind the whole or part of the provisions of any such instrument, but only with consent of the incumbent during his life, if it affect his emolument (*i*).
- When endowment obtained, pew rents to cease wholly or in part. 662. When any body or person endows with a provision of land or money, in lieu of pew rents, to the satisfaction of the commissioners and bishop, any church for which pew rents had been previously fixed by the commissioners, and the rents had not been assigned or appropriated under any local act, the commissioners may, with consent of the bishop, order that such rents shall cease either wholly or in part; and the seats exempted from rent shall be at the disposal of the churchwardens as in an ancient parish church (*k*).
- Under Act of 1824 pew-holders elect trustees, who have patronage of church. 663. Under the Act of 1824, where the existing church accommodation in any parish, chapelry, township or extra-parochial place is insufficient for one-fourth of the inhabitants, persons may subscribe to build or buy a church or chapel, to continue under the management of trustees elected by such pew-holders as have subscribed at least 50*l.*; and the trustees have the nomination of a clergyman for the next two turns, or any number during forty years (*l*).
- Proposal for building to state proportion of free seats. 664. The preliminary proposal must state the number or proportion of free seats, when part of the funds is advanced by the commissioners, and offer out of the rents of the other seats to provide a competent salary for the

(*h*) 19 & 20 Vict. c. 104, s. 7.

(*i*) Ibid. s. 8.

(*k*) 14 & 15 Vict. c. 97, s. 1.

(*l*) 5 Geo. IV. c. 103, ss. 5, 6, 7, 12.

clergyman, and for expenses of service and maintenance of the building (*m*).

a. GENERAL ACTS.

665. The Act of 1831 requires (amongst other things) that the bishop should be supplied with a certificate, signed by an architect or surveyor and attested by two respectable householders in the parish, to the effect that the existing churches and chapels do not afford by actual admeasurement accommodation for more than one-third of the inhabitants (*n*).

Persons building a church to produce certificate of insufficient accommodation.

666. But if the person or persons who build the church also endow it, to the satisfaction of the commissioners, with lands or monies exclusively or in addition to the pew rents or other profits arising therefrom, the commissioners may declare the right of nominating the minister to be for ever in such person or persons and their heirs, assigns and appointees (*o*). But the patronage shall not be vested in more than five trustees, unless the commissioners have, previous to 15th October, 1831, sanctioned a larger number of trustees, or such patronage shall pass by descent to coparceners, or by gavelkind or otherwise (*p*).

Unless they endow either with or without pew rents; and then they have patronage.

667. The scale of rents is to be fixed by the trustees or person who builds or endows, and approved by the bishop, and may be altered in like manner: in the yearly letting by the churchwardens a preference is to be given to parishioners (*q*).

Trustees to fix rents, subject to bishop; preference of letting to parishioners.

668. Renters of pews in a church or chapel, built under the Act of 1831, are to elect one churchwarden, whose duty, jointly with the other who is chosen by the incumbent, is to receive the rents and pay stipend, salaries and

Renters of pews (under Act of 1831) to elect one warden.

(*m*) 5 Geo. IV. c. 103, s. 10.

(*n*) 1 & 2 Will. IV. c. 38, s. 3.

(*o*) 7 & 8 Geo. IV. c. 72, s. 3.

(*p*) 1 & 2 Will. IV. c. 38, s. 5.

(*q*) Ibid. s. 4.

a. GENERAL
ACTS.

Doubts as to
power of re-
taining seats
after beginning
of service.

expenses; and in default of payment of rents to sell the seats by auction or otherwise (*s*). It is not specified that either of the persons chosen and elected as churchwardens should be inhabitants of the parish or district.

Lease deter-
mines on
lessee be-
coming non-
parishioner.

669. Doubts have been often entertained whether, in the event of any persons, to whom seats are let, not occupying them at the beginning or at any specified part of divine service, the seats can be made available for other persons during that or the remainder of that service; but the question seems never to have been tried.

Lease deter-
mines on
lessee leaving
parish, or by
non-user.

670. Where an inhabitant, having a lease of a pew or sitting in a church for a longer term than a year, ceases to be an inhabitant of the parish, or discontinues attendance at church for a year, then such lease is to determine at the expiration of the then current year, and the pew may again be let in manner above described (*t*).

Rents in
chapel of ease
cease on its
becoming dis-
trict chapel.

671. In case of lease of a pew to an inhabitant of the parish, if he cease so to be, or discontinue attendance at the church for a year, his interest in the pew ceases and determines, and the pew may be let again (*t*).

672. A chapel vested by deed in 1840 in trustees as a chapel of ease, with permission to the vicar and churchwardens to let the pews, and for the churchwardens to apply the rents towards expenses and to pay the balance to the vicar, became, by order in council in 1860, a district chapel with right of performing marriages, &c., the fees for which were to belong to present vicar for life and afterwards to the minister of the chapel: but no mention was made in the order about pew rents. It was held that the effect of the order was to withdraw the chapel from the purposes of the trust deed, and constitute it a benefice;

(*s*) 1 & 2 Will. IV. c. 38, s. 16; 8 & 9 Vict. c. 70, s. 7.

(*t*) 3 Geo. IV. c. 72, s. 25.

and to deprive the vicar and churchwardens of all right to receive the pew rents (*u*). *Quære*, whether after the creation of a district chapelry the pews could lawfully be let at all (*x*).

a. GENERAL
ACTS.

673. A gradual restoration of the system of freedom of seats is contemplated in the Act of 1822, whereby it is provided that the Church Building Commissioners may, with consent of the owners, transfer all rights in any pews in an existing church, belonging to persons in the new district, to any church or chapel of such district built under the provisions of the Church Building Acts, for the purpose of increasing the number of free seats in the church from which such rights may be transferred. Every such transfer shall state under what title the pew was held, and shall suffice without any faculty or other instrument, and shall be registered in the registry of the diocese, and a duplicate deposited in the chest of the church or chapel in which such pew is so assigned (*y*). No greater right can be given in the new church than was formerly possessed in the old church.

Owners may
transfer all
their rights to
increase free
seats.

674. And greater facilities are afforded for the same object by the Act of 1869. Whenever by any public or private act of parliament, or by any deed, the sittings or any of them in any church or chapel, whether consecrated or unconsecrated, are subject to any trust as to their grant, demise, sale or disposal, or are private property for any estate whatsoever, the trustees of such church or chapel, or other the person exercising powers of grant, &c., or possessing any rights of ownership by reason thereof, or any person to whom such sittings belong, either with or without consideration, may surrender to the bishop, or

Facilities for
surrender.

(*u*) *Fitzgerald v. Fitzpatrick*, *Law J. Rep.*, 33 *N. S.*, *Chanc.* p. 673.

(*x*) *Ibid.* p. 670.

(*y*) 3 *Geo. IV. c. 72*, s. 23.

a. GENERAL
ACTS.

To be by deed
and registered.

And former
rights and
obligations
cease.

Sittings then
vest in bishop
till consecra-
tion of build-
ing; then be-
come as seats
in old parish
church.

Other rights
cease except
patronage.

the Ecclesiastical Commissioners, all rights of ownership, grant, demise, sale, disposal, or other right whatsoever they may have in such sittings (*z*).

675. Every such surrender must be by deed executed by all parties thereto, including the bishop and patron, and registered in the diocesan registry (*a*).

676. Upon such surrender the trusts or rights of ownership and the obligations affecting such sittings, under such act of parliament or deed, shall at once and *ipso facto* determine and be thenceforth void (*b*).

677. Such sittings thereupon, to the extent of the rights or powers expressed to be surrendered, become subject to the same laws as to rights and property therein as the pews and sittings of ancient parish churches are now subject to. It is provided, that if the church or chapel be not consecrated, the surrendered sittings belong absolutely to the bishop and his successors, or the commissioners, as the case may be, until the consecration of the church or chapel, from and after which the said sittings are subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches. And the freehold of any church or chapel, consecrated or unconsecrated, may be transferred to the commissioners in like manner as the sittings and be held by them until the consecration, after which they become subject to the same laws of rights and property therein as the pews and sittings of ancient parish churches (*c*).

678. When there has been a complete surrender of the rights, powers, obligations and trusts affecting the sittings,

(*z*) New Parishes and Church Building Acts Amendment, 32 & 33 Vict. c. 94, s. 2.

(*a*) Ibid. s. 3.

(*b*) Ibid. s. 4.

(*c*) Ibid. ss. 5 & 6.

or when the transfer of the church or chapel has been effected, all other rights, powers, obligations and trusts derived from the act of parliament or deed under which the church or chapel was built, absolutely cease and determine: saving that rights of patronage are not affected (*d*).

a. GENERAL
ACTS.

679. A person living in a parish or district formed under the Church Building Acts, who has claimed and had assigned to him sittings in the church thereof, thereby surrenders as to any right he may have possessed, an equal number of sittings in the church of the original parish or ecclesiastical district out of which such parish has been taken, unless he hold them by faculty or under act of parliament (*e*). Seats held by prescription are not referred to; and it may, therefore, be doubted whether they would not be absolutely abandoned.

Seats in old church are abandoned on accepting allotment in district church where resident.

Prescriptive rights.

680. An incumbent entitled to pew rents may thereby be entitled to the franchise (*f*). The freehold interest in the church appears to be the real qualification, and the only importance of pew rents is to make the value sufficient; because if the incumbent has a bare freehold in the church, with no power to make any profit out of it, that does not qualify. The fees on marriages, &c. do not afford the money qualification (*g*). The best description in a claim of the kind would seem to be "freehold church with right to pew rents" (*h*).

Pew rents may confer franchise upon incumbent.

(*d*) New Parishes and Ch. Bg. Acts Amend., 32 & 33 Vict. c. 94, s. 7.

(*e*) 19 & 20 Vict. c. 104, s. 5.

(*f*) 15 *Solicitor's Journal*, p. 893 (21 Oct. 1871).

(*g*) *Kirton v. Dear*, 18 *Weekly Rep.* p. 144.

(*h*) 15 *Solicitor's Journal*, p. 893.

PART D.

CHURCHES BUILT UNDER ACTS OF PARLIAMENT.

DIVISION b.

b. PRIVATE ACTS.

PRIVATE ACTS.

Private acts
are exceptions
to general law.

681. As private acts are in their nature exceptions to the general law of the land, and each case to which they refer is necessarily governed by its own special provisions, very few points affecting more than an individual locality can be stated or laid down.

Under a local
act rector not
necessarily
entitled to pew.

682. It was, however, decided that where under a local act of parliament (*a*) the vestrymen were empowered to let all the pews in a church, "except the pews or seats to be appropriated for the gratuitous accommodation of the poor," the court had no power to engraft another exception, and the vestrymen, consequently, had power to remove the rector from one of pews of which he had been in possession from the time of his induction, and to let them to another inhabitant householder (*b*).

Though by
unwise act of
vestry.

683. Under such circumstances it is not wise, just, expedient, or proper, on the part of the vestry, for the sake of a paltry saving of a few pounds, to deprive the rector of his pew, or to exact rent for it. And, although the Ecclesiastical Court decided against the rector, because it was bound by the act of parliament, it refused to condemn him in costs (*c*). Such an act of parliament directly overturns

(*a*) 51 Geo. III. c. 151, ss. 51, 52.

(*b*) *Spry v. Flood*, 2 *Curt.* p. 335.

(*c*) *Ibid.* p. 397.

all the common law upon the subject, for it at once subverts the authority of the churchwardens, the ancient officers of the church, and confers it upon the vestrymen, who by the old law had no authority at all (*d*).

688. Where the act empowered trustees for pulling down and rebuilding the church of a chapelry, to sell and dispose of the fee simple and inheritance of the pews or seats to any of the inhabitants or residents within the chapelry, with power of sale to any other inhabitants, but with provision that on the death of the purchaser and in default of so descending to revert to the trustees; and the form of conveyance annexed to the statute granted the pew to the purchaser, his heirs and assigns for ever: the Court of Common Pleas held, that it was not the intention of the act to take the freehold from the rector and vest it in the trustees; the purchaser only acquired a right of user; and, therefore, did not acquire a vote for the county by reason that the pew was worth 40*s.* per annum (*e*).

689. In another case of a church built under private acts, whereby trustees were empowered "to let or sell, and transfer and convey, for the purpose only of attending divine service," and where it was declared that the fee simple and inheritance should be vested in the subscribers, or the proprietors for the time being of the pews, their heirs and assigns for ever: the Court of Common Pleas held that by common law the freehold was generally in the parson, and the right of the inhabitants was limited to use during the services of the church, and at times when open for use, and subject to the regulations of the church; and the act did not vest the freehold in the purchaser. The right was not an interest in the land, but more in the

b. PRIVATE ACTS.

Pews sold under an act, but limited to descend to inhabitants, give no vote for county.

Pews sold under an act vesting the fee simple in the proprietor does not give a vote for county.

(*d*) *Spry v. Flood*, 2 *Curt.* p. 365.

(*e*) *Hinde v. Chorlton*, 15 *Law Times*, p. 472 (1867).

**b. PRIVATE
ACTS.**

Same rule applies to public act for local purpose.

Facilities for surrender.

nature of an easement, although this act attached rights of perpetuity of succession. Consequently, though of 5*l.* annual value, such pew was not a freehold estate entitling the owner to a vote for the county (*f*).

690. And this was immediately followed by a case of a church rebuilt under a public act for building East Stonehouse Chapel, whereby the pews were to be appropriated by the trustees to the subscribers, and then to become vested in such proprietors, their heirs and assigns for ever. The same court decided, in accordance with the last-mentioned case, that there was not a freehold interest entitling the proprietor of a pew to a vote for the county (*g*).

691. Whenever by any public or private act of parliament, or by any deed, the sittings, or any of them, in any church or chapel, whether consecrated or unconsecrated, are subject to any trust as to their grant, demise, sale or disposal, or are private property for any estate whatsoever, the trustees of such church or chapel, or other person exercising powers of grant, &c., or possessing any rights of ownership by reason thereof, or any person to whom such sittings belong, either with or without consideration, may surrender to the bishop, or the Ecclesiastical Commissioners, all rights of ownership, grant, demise, sale, disposal or other right whatsoever they may have in such sittings (*h*).

692. The other provisions of the act touching this point are already given in **DIVISION a** relating to the general Church Building Acts, to which they equally apply.

(*f*) *Brumfitt v. Roberts & ors.*, *L. R.*, 5 *Com. Pl.* p. 233 (1870).

(*g*) *Greenway v. Hockin*, *L. R.*, 5 *Com. Pl.* p. 235 (1870).

(*h*) New Parishes Acts Amendment, 32 & 33 Vict. c. 94, s. 2.

LIST OF CASES.

ABBREVIATIONS.

Adm. & Eccles. indicates Admi- ralty & Ecclesiastical.	Eq. indicates Equity.
C. B. indicates Common Bench.	Exch. „ Exchequer.
C. P. „ Common Pleas.	K. B. „ King's Bench.
Chanc. „ Chancery.	N. P. „ Nisi Prius.
Cons. „ Consistory.	P. C. „ Privy Council.
Eccles. „ Ecclesiastical.	Q. B. „ Queen's Bench.
	V. C. „ Vice Chancellor.

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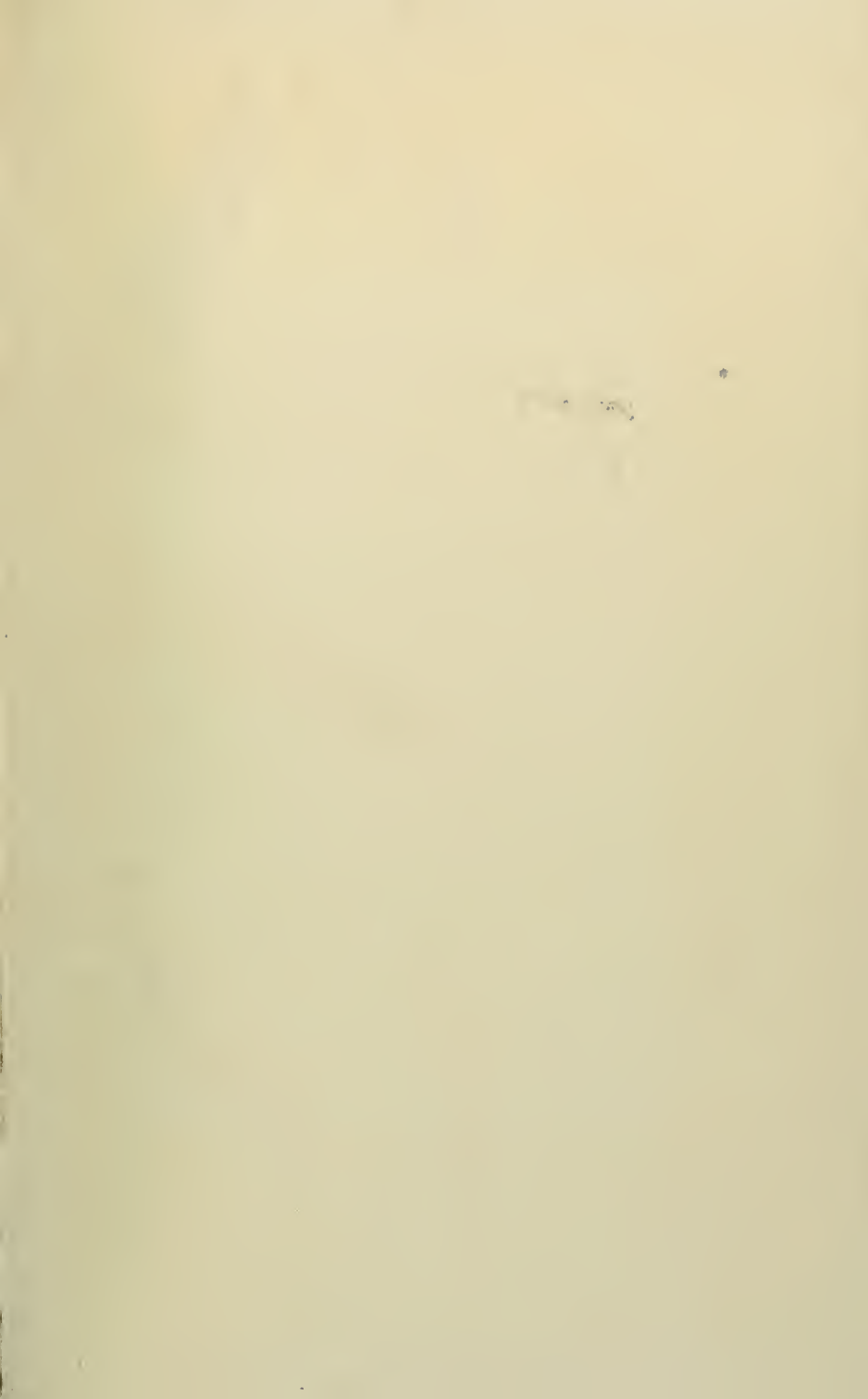
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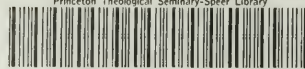


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